

State of Florida



Public Service Commission

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

-M-E-M-O-R-A-N-D-U-M-

DATE: March 01, 2007

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Gervasi)
Division of Economic Regulation (Johnson, Kaproth, Walden)

RE: Docket No. 050595-WS – Application for certificates to provide water and wastewater service in Polk County by Four Points Utility Corporation.

AGENDA: 03/13/07 – Regular Agenda – Proposed Agency Action on Issues 4, 5, and 6 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Pending

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050595.RCM.DOC

Case Background

On September 8, 2005, Island Club West Development Inc. (Island Club) filed an application for certificates of authorization for an existing utility currently charging for water and wastewater service in Polk County (County). In January 2006, Island Club chose to place the utility operations under a sister corporation, Four Points Utility Corporation. On June 15, 2006, the utility officially notified the Commission that the utility corporate entity would be Four Points Utility Corporation (Four Points or utility). The utility is located in a water use caution area of the Southwest Florida Water Management District. The utility has been in existence since 2001, and serves approximately 255 residential connections and two general service connections.

Although Polk County came under Commission jurisdiction on May 14, 1996, this utility was not brought to the attention of the Commission until a customer of the utility filed a complaint. Four Points filed an application for water and wastewater certificates on September 8, 2005, after staff contacted the utility about inquiries from customers about the veracity of charges imposed by the utility.

By Order PSC-06-0753-SC-WS, issued September 6, 2006, in this docket, the Commission required the utility to show cause why it should not be fined in the amount of \$5,000 for its failure to obtain certificates of authorization and approval of rates and charges prior to providing service to customers. The utility paid the fine in lieu of filing a response to the show cause order. Moreover, by that same Order, the Commission temporarily authorized the utility to charge rates, with revenues held subject to refund, pending approval of final rates in this docket. Additionally, the utility was ordered not to discontinue service for failure of a customer to pay contested bills for utility services subject to Commission jurisdiction during the pendency of the Commission's water and wastewater, electric, and telephone service investigations.

Sixteen customers took the time to write letters to the Commission complaining about utility billings, service, and objecting to the utility's application for certificate. Other customers sent e-mails concerning billing issues. One customer, the Chairman of the Island Club West Homeowners Association (Association), filed a request for hearing, after which time the utility and customers (parties) engaged in mediation conducted by a Commission-sponsored mediator. Through the mediation process, the parties arrived at a Settlement Agreement to resolve all of the issues between them. A copy of the Settlement Agreement is attached to this recommendation as Attachment A. On November 17, 2006, with the express consent of the Association, Four Points filed a Consented Motion Seeking Commission Approval of Settlement Agreement and Cancellation of Hearing.

Sometime thereafter, staff became aware that Four Points erroneously increased its temporarily authorized rates from November 2006 to January 2007, to match an increase of the County's residential rates. The utility corrected this error and refunded the overcharges to customers by applying a credit to customer bills in February 2007.

This recommendation addresses the settlement agreement, whether the utility should be required to show cause as to why it should not be fined for charging unauthorized rates from November 2006 to January 2007, the application for original water and wastewater certificates, initial rates and charges, and the monies in escrow held subject to refund. The Commission has jurisdiction pursuant to Sections 367.031, 367.045, 367.081, and 367.161, Florida Statutes.

Discussion of Issues

Issue 1: Should the Consented Motion Seeking Commission Approval of Settlement Agreement be granted?

Recommendation: Yes, the Consented Motion Seeking Commission Approval of Settlement Agreement should be granted and the Settlement Agreement should be accepted and approved without modification. (Gervasi)

Staff Analysis: After Mr. Jim Brett, Chairman of the Island Club West Homeowners Association (Association), filed a formal objection to the utility's application on behalf of customers, the utility and the customers (parties) engaged in mediation conducted by a Commission-sponsored mediator. As stated in the case background, through the mediation process, the parties arrived at a Settlement Agreement to resolve all of the issues between them. On November 17, 2006, with the express consent of the Association, Four Points filed a Consented Motion Seeking Commission Approval of Settlement Agreement and Cancellation of Hearing (Motion).

In the Motion, the parties state that they believe the Settlement Agreement serves the public interest and is consistent with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues wherever possible. Accordingly, the parties request that the Commission accept and approve it without modification. The parties further requested cancellation of the hearing which was scheduled for March 1, 2007, in this docket. Upon that request and the Prehearing Officer's recommendation, the Chairman's Office cancelled the hearing.

In the Settlement Agreement, the utility agrees to utilize meters that conform to Commission rules; read meters in accordance with the established protocol attached as Exhibit A to the Settlement Agreement; and perform meter testing in accordance with Commission rule and with a customer representative to monitor the test if the Association so desires. The Settlement Agreement requires the utility to conduct a customer meeting within 30 days of Commission approval, to instruct customers how to read and review their own meters, and to discuss how to alleviate problems arising from abnormally high usage levels. The utility has informed staff that it will conduct this customer meeting on March 21, 2007. The Settlement Agreement also provides that the utility shall establish a 24-hour telephone number for utility service emergencies and redesign the format of its bills to include the meter serial number and actual usage. A copy of the new bill format is attached to the Settlement Agreement as Exhibit B. The Settlement Agreement also requires the utility to provide a specified system map to Mr. Brett within a specified time, which the utility has done.

Moreover, in the Settlement Agreement, the utility represents and warrants that it is financially able to provide a safe, continuous and reliable service to the customers. The Settlement Agreement requires the utility to provide Mr. Brett with a written history of payments made to Polk County (County) for bulk water and wastewater service within a specified time, which the utility has done. The utility has placed a deposit with the County in the amount of \$4,200 in order to secure bulk service, agrees to maintain the deposit at all times, and agrees to

provide the Association with a monthly copy of the County invoice for bulk service along with a copy of the check to the County for payment for the service. The Settlement Agreement requires that two weeks prior to the Commission's final decision in this docket, the utility will submit a current financial statement and balance sheet for proof of financial responsibility at that time, which the utility has done. Finally, the parties agree that if the Commission accepts the Settlement Agreement and issues a final order with respect to the certificate application, the protest shall be deemed withdrawn and all issues concerning the application among and between the parties shall be deemed resolved. If the Settlement Agreement is not accepted and approved without modification by Commission Order, it shall be considered null and void and neither party may use the attempted agreement in this or in any other proceeding.

Staff believes that it is in the public interest to approve the Settlement Agreement without modification, as a reasonable resolution of Mr. Brett's protest. The Settlement Agreement benefits all participants in this proceeding by alleviating customer concerns about the certificate application and by avoiding the time and expense of a hearing in this matter. Therefore, staff recommends that the Commission grant the Motion and accept and approve the Settlement Agreement without modification.

Issue 2: Should Four Points Utility Corporation be ordered to show cause, in writing within 21 days, as to why it should not be fined for charging unauthorized rates from November 2006 to January 2007, in apparent violation of Sections 367.081(1) and 367.091(3), Florida Statutes, and Rule 25-30.135, Florida Administrative Code?

Recommendation: No, Four Points Utility Corporation should not be ordered to show cause for charging unauthorized rates from November 2006 to January 2007. However, the utility should be admonished that it must charge its Commission-approved rates and charges until authorized to change by the Commission, and that such apparent violations will not be tolerated in the future. The utility should be required to file a status report verifying the amount credited to each customer account. The report should be filed within 30 days of the issuance date of the Order memorializing the Commission's decision on the merits of the utility's application. (Gervasi, Johnson)

Staff Analysis: As stated in the case background, Four Points erroneously increased its temporarily authorized rates from November 2006 to January 2007, to match an increase of the County's residential rates. The utility provided a breakdown of the overcharges, which amounted to a total of \$545.41. Four Points corrected this error by charging its Commission authorized rates for its February, 2007 billing. In addition, the utility provided a spreadsheet showing the total amount of credit to be applied to each customer bill. The credit was applied to the customers' accounts on February 27, 2007.

Section 367.081(1), Florida Statutes, provides that a utility may only charge rates and charges that have been approved by the Commission. Section 367.091(3), Florida Statutes, requires that each utility's rates, charges, and customer service policies be contained in a tariff approved by and on file with the Commission. Rule 25-30.135(1) and (2), Florida Administrative Code, requires utilities to file tariffs and prohibits utilities from modifying or revising their rules, regulations, or schedules of rates and charges until they file and receive approval from the Commission for any such modification or revision. By increasing its temporarily authorized rates from November 2006 to January 2007 without Commission approval, Four Points is in apparent violation of the above-identified provisions of Chapter 367, Florida Statutes, and Commission rule.

Section 367.161(1), Florida Statutes, 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, Florida Statutes. By increasing its temporarily authorized rates from November 2006 to January 2007 without Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, 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., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order the utility to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Although Four Points' failure to obtain Commission approval prior to increasing its temporarily authorized rates from November 2006 to January 2007 is an apparent violation of

Sections 367.081(1) and 367.091(3), Florida Statutes, and Rule 25-30.135, Florida Administrative Code, there are circumstances which appear to mitigate the utility's apparent violation. The utility mistakenly believed that because the Commission had authorized it to continue collecting its existing rates, which were the same as the Polk County residential rates, that when the County increased its rates the utility could also increase its rates. When the utility became aware of this error, it took immediate steps to correct it by issuing credits on all customer bills in the amount of the overcharges. The vast majority of customers were overcharged in an amount of less than \$5.00, for a total of \$545.41 of overcharges on a system-wide basis that have been credited to customer bills. Therefore, staff does not believe that the apparent violation of Sections 367.081(1) and 367.091(3), Florida Statutes, and Rule 25-30.135, Florida Administrative Code, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. However, the utility should be required to file a status report verifying the amount credited to each customer account. The report should be filed within 30 days of the issuance date of the Order memorializing the Commission's decision on the merits of the utility's application.

For the foregoing reasons, staff recommends that Four Points Utility Corporation should not be ordered to show cause for charging unauthorized rates from November 2006 to January 2007. However, as noted in the case background, by Order PSC-06-0753-SC-WS, the Commission required Four Points to show cause why it should not be fined in the amount of \$5,000 for its failure to obtain certificates of authorization and approval of rates and charges prior to providing service to customers. The utility paid the fine in lieu of filing a response to the show cause order. Because this is the second time that Four Points has charged unauthorized rates, the utility should be admonished that it must charge its Commission-approved rates and charges until authorized to change by the Commission, and that such apparent statutory and rule violations will not be tolerated in the future.

Issue 3: Should the application of Four Points Utility Corporation for water and wastewater certificates be granted?

Recommendation: Yes. The Commission should grant Four Points Utility Corporation Certificate Nos. 634-W and 544-S to serve the territory described in Attachment B, to be effective on the date of the Commission's vote. The subsequent order will serve as the utility's water and wastewater certificates and should be retained by the utility. The utility should be put on notice that the 2006 annual report and Regulatory Assessment Fees (RAFs) are due March 31, 2007. (Johnson, Walden, Kaproth, Gervasi)

Staff Analysis: As stated in the case background, Four Points filed an application for original water and wastewater certificates to provide service in Polk County on September 8, 2005. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for original certificates.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The notice of application for an initial certificate of authorization for water and wastewater certificates was mailed to the customers on December 20, 2005. As mentioned earlier, many customers and the homeowners association objected to the utility's application. The utility and the customers have resolved their issues and reached a Settlement Agreement, which is addressed in Issue 1 and attached to this recommendation as Attachment A. There have been no other objections to the notice of application and the time for filing such has expired.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.033(1) (l), (m) and (n), Florida Administrative Code. A description of the territory recommended by staff totaling 40 acres is appended to this memorandum as Attachment B. This is less territory than was requested by the applicant, since the notice was for 70 acres. Staff is recommending that the utility be granted water and wastewater certificates for the territory already being served, which is a subdivision called Island Club. An additional 30 acres south of the Island Club development was noticed, but no need for service to that area has been shown and no indication has been given as to how service would be provided. The additional 30 acres is across Sand Mine Road from the current Island Club development. Staff believes the Commission should grant certificates for the existing service area. The utility may file an amendment application when plans for development of any additional area are more concrete. The staff has discussed this service area issue with the utility and the utility understands staff's recommendation in this regard.

The applicant appears to have the financial and technical ability to provide service to the service area. The applicant is affiliated with the developer of the service area which is providing the funding to cover the operations of the utility. The owner has agreed to provide financial support to the utility and has provided a copy of his personal financial statement. Staff has reviewed the financial statement of the owner and it appears that there are adequate resources to support the utility. Also, measures have been taken as a result of the Settlement Agreement to secure the confidence of the customers of the utility's financial stability.

Regarding the applicant's technical ability, the owner indicated that he will make the financial and operating commitment necessary for Four Points to be successful in providing water and wastewater service to the residents in the service territory. The applicant has retained licensed professionals for the management and operation of the utility systems. In addition, the applicant has set up its books and records for the utility in compliance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts (NARUC USOA) and has indicated an understanding that the utility may not change its rates and charges, serve outside of its authorized territory, or sell the utility without obtaining prior Commission approval. Also, as a regulated utility, the utility owner understands the requirements to file an annual report and remit regulatory assessment fees.

The Island Club West development consists of 255 residential connections and 2 general service connections. The applicant stated that the only other utility nearby that could provide service is Polk County. Polk County provides both water and wastewater service to the utility at a bulk rate. The applicant states that the provision of service in the service territory, as outlined in the application, is consistent with the water and wastewater sections of the local comprehensive plan for Polk County, as approved by the Department of Community Affairs (DCA).

According to our records, the utility's 2005 annual report has been filed and a fine for filing the annual report late has been paid. Also, the 2005 RAFs, penalties, and interest for late payment of the RAFs have been paid. The utility should be put on notice that the 2006 annual report and RAFs are due March 31, 2007.

Based on the above information, staff believes it is in the public interest to grant the application for original water and wastewater certificates. Accordingly, staff recommends that Four Points Utility Corporation be granted Certificate Nos. 634-W and 544-S to serve the territory described in Attachment B, to be effective on the date of the Commission's vote. The subsequent order will serve as the utility's water and wastewater certificates and should be retained by the utility. The utility should be put on notice that the 2006 annual report and RAFs are due March 31, 2007.

Issue 4: What are the appropriate initial water and wastewater rates and return on investment for this utility?

Recommendation: The utility's proposed water and wastewater rates shown on Schedule No. 6 should be approved. The utility should be required to notice all customers of the approved rates prior to billing for monthly water and wastewater service. The utility should also be required to file a proposed customer notice reflecting the Commission-approved rates within ten days of the date of the consummating order. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. Four Points should charge the approved rates until authorized to change them by this Commission in a subsequent proceeding. A return on equity of 8.97% plus or minus 100 basis points should be approved. (Johnson)

Staff Analysis: Four Points' proposed rates are based on its current rate base, cost of capital, customer demand, and operating and maintenance expenses. In reviewing the utility's proposed rates and charges, it appears that the utility's calculations are reasonable and consistent with those normally used by the Commission in setting initial rates and charges for a utility in existence. The analysis below describes the utility's proposed and staff's recommended initial rates and charges and return on investment for water and wastewater service.

RATE BASE

The utility's proposed rate bases are \$27,887 for water and \$28,522 for wastewater as shown on Schedule Nos. 1 and 2. The rate base schedules are for informational purposes to establish initial rates and charges, and are not intended to formally establish rate base. This is consistent with Commission practice in original certificate applications.

Utility Plant-in-Service (UPIS)

The utility proposed UPIS of \$210,654 for water and \$213,533 for wastewater. The utility's proposed UPIS includes \$20,000 in organization costs for each system. The remaining UPIS of \$190,654 for water and \$193,533 for wastewater reflects the developer's investment in transmission and distribution lines, services, meters, hydrants, backflow devices, and collection sewers. Four Points constructed and donated to the County a lift station, receiving wells and supply mains to connect to the County. The donated plant is not included in the rate base balances. The facilities are designed to serve a total buildout of 255 residential ERCs and 2 general service ERCs.

Staff has reviewed the utility's UPIS costs and, based on the supporting documentation provided, the amounts appear reasonable. Therefore, staff recommends that the utility's proposed balances of \$210,654 for water and \$213,533 for wastewater should be included in the UPIS accounts.

Accumulated Depreciation

The utility proposed accumulated depreciation balances of \$16,284 for water and \$13,299 for wastewater. The accumulated depreciation was calculated using the guideline rates for

average service lives as set forth in Rule 25-30.140, Florida Administrative Code. Therefore, staff recommends that the utility's proposed accumulated depreciation balances of \$16,284 for water and \$13,299 for wastewater are appropriate and should be included in rate base.

Contributions-In-Aid-of-Construction (CIAC) and Accumulated Amortization

The utility did not provide evidence to show that the investments in water and wastewater facilities, with the exception of organization costs, were not written off to the cost of goods sold on the developer's tax returns. Pursuant to Rule 25-30.570, Florida Administrative Code, [i]f the amount of CIAC has not been recorded on the utility's books and the utility does not submit competent substantial evidence as to the amount of CIAC, the amount of CIAC shall be imputed to be the amount of plant costs charged to the cost of land sales for tax purposes if available, or the proportion of the cost of the facilities and plant attributable to the water transmission and distribution system and the sewage collection system.

Therefore, staff recommends that because all of the utility's investment in plant is transmission, distribution, and collection lines, other than the recent organization costs, the value of these lines, \$190,654 for water and \$193,533 for wastewater, are the appropriate CIAC balances to include in rate base. The associated accumulated amortization balances are \$15,784 for water and \$12,799 for wastewater.

Working Capital

Working capital allowances of \$8,387 and \$9,022 for water and wastewater respectively, are included in the proposed rate base calculations based on one-eighth of operating and maintenance expenses for each system. Staff recommends that the amounts appear reasonable, and working capital allowances of \$8,387 and \$9,022 should be included in rate base.

Summary of Rate Base

Staff recommends that for purposes of setting initial rates and charges, the utility's proposed rate base balances of \$27,887 for water and \$28,522 for wastewater should be used. The schedules of rate base are for informational purposes to establish initial rates and charges and are not intended to formally establish rate base.

COST OF CAPITAL

The proposed capital structure for Four Points is shown on Schedule No. 3. The pro forma capital structure consists of 100% equity. The utility proposed an overall cost of capital of 8.97% based on the current leverage formula authorized in Order No. PSC-06-0476-PAA-WS, issued June 5, 2006, in Docket No. 060006-WS, In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081 (4) (f), F.S., which was consummated by Order No. PSC-06-0554-CO-WS, issued June 27, 2006.

Staff agrees with the utility's cost of capital proposal. Therefore, staff recommends that an overall cost of capital of 8.97% for Four Points be used to set the initial rates.

RETURN ON INVESTMENT

The utility's proposed return on investment, based on a cost of capital of 8.97%, is \$2,501 for water and \$2,558 for wastewater which is shown on Schedule Nos. 4 and 5. Based on staff's recommended rate base and overall return on investment for Four Points, a return on investment of \$2,501 for water and \$2,558 for wastewater should be included in the utility's revenue requirements for setting initial rates.

Revenue Requirement

Four Points' proposed revenue requirements are \$73,410 and \$78,782 for water and wastewater, respectively. The utility's proposed revenue requirements and rates are based on its proposed rate base, the cost of capital, operating and maintenance expenses, depreciation expense and regulatory assessment fees. The following analysis describes the utility's proposed and staff's recommended revenue requirements.

Operations and Maintenance (O&M) Expenses

The utility's proposed O&M expenses of \$67,096 for water and \$72,179 for wastewater are based on current costs for purchased water and treated wastewater, salaries, materials and supplies, bad debt, miscellaneous expenses, and contractual services. Staff recommends that the amounts appear to be reasonable and, therefore, \$67,096 for water and \$72,179 for wastewater should be included in the revenue requirements for operating and maintenance expense.

Depreciation Expense and Amortization Expense

The utility's proposed depreciation expense of \$9,382 for water and \$8,949 for wastewater is based on the depreciation rates reflected in Rule 25-30.140, Florida Administrative Code. The utility's proposed CIAC amortization expense is \$8,882 for water and \$8,449 for wastewater. Staff recommends that the utility's proposed net depreciation and amortization expense of \$500 for water and \$500 for wastewater be included in the revenue requirement.

Taxes Other Than Income and Income Taxes

The proposed balances for taxes other than income of \$3,313 for water and \$3,545 for wastewater are for regulatory assessment fees (RAFs) of 4.5% of gross revenues for the systems. The utility operation does not incur an income tax liability; therefore, no income tax expense was included in the proposed revenue requirement. Staff recommends that taxes other than income of \$3,313 for water and \$3,545 for wastewater should be included in the revenue requirement.

Summary of Revenue Requirement

Based on staff's analysis of the utility's proposed operating and maintenance expenses, depreciation and amortization of CIAC, taxes other than income, and return on investment, staff recommends that the utility's proposed revenue requirements of \$73,410 and \$78,782 for water and wastewater, respectively, should be used in setting initial rates for Four Points.

RATES AND CHARGES

The utility proposed rates which are designed to produce revenues of \$73,410 and \$78,782 for water and wastewater. The customer base includes 255 residential customers with 5/8" x 3/4" meters.

The utility proposed two rate structures for water. One includes a base facility charge (BFC) of \$11.68 and a single gallonage charge of \$2.94. The other includes a BFC of \$11.68 and a two tiered gallonage charge of \$2.75 for the first 10,000 gallons and \$3.37 for usage in excess of 10,000 gallons.

The two tiered gallonage charge will induce conservation of water by sending a price signal to residential customers that the cost of consumption will increase as consumption increases. This will encourage high consumption customers to reduce their consumption or to upgrade plumbing fixtures to achieve more efficiency.

Currently, the utility's rate for water includes an inclining block rate structure with four tiers as shown on Schedule No. 6. Because customers are currently charged for water based on an inclining block rate structure, the Commission-approved rates should also be based on an inclining block rate structure. However, because approximately 90% of the water demand is 10,000 gallons per month or less, more than two tiers are not needed. Therefore, staff recommends that a water rate structure with a BFC and a two tiered gallonage charge is appropriate because it encourages conservation.

The requested wastewater rates include a BFC of \$13.39 and a gallonage charge of \$3.33 capped at 10,000 gallons for residential customers. Staff recommends a wastewater rate structure to include a BFC of \$13.39 and a gallonage charge of \$3.33 capped at 10,000 gallons for residential customers.

The utility's proposed and staff's recommended monthly water and wastewater rates, along with a comparison of typical monthly bills, as shown on Schedule No. 6, should be approved. The utility should be required to notice all customers of the approved rates prior to billing for monthly water and wastewater service. The utility should also be required to file a proposed customer notice reflecting the Commission-approved rates within ten days of the date of the consummating order. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. Four Points should charge the approved rates until authorized to change them by this Commission in a subsequent proceeding. A return on equity of 8.97% plus or minus 100 basis points should be approved.

Issue 5: What are the appropriate miscellaneous service charges, late payment charge, and service availability charges?

Recommendation: The Commission's standard miscellaneous water and wastewater service charges and a late payment charge are reasonable and should be approved. These charges should become effective on or after the stamped approval date, pursuant to Rule 25-30.475, Florida Administrative Code, and should be included in the notice to the customers. The utility should not be authorized to charge service availability charges

Staff Analysis: The applicant has requested the Commission's standard miscellaneous water and wastewater service charges and a \$5.00 late payment charge to discourage delinquent payments. Staff believes this request is reasonable and the amount is consistent with recent Commission decisions.¹ In addition, since the utility is at built out and all of the existing facilities were donated as CIAC, there is no need to establish service availability charges. If the utility expands its territory, the need for service availability charges should be addressed at that time.

Based on the above, staff recommends that the Commission's standard miscellaneous water and wastewater service charges and a \$5.00 late payment charge as shown on Schedule No. 6 are reasonable and should be approved. These charges should become effective on or after the stamped approval date, pursuant to Rule 25-30.475, Florida Administrative Code, and should be included in the notice to the customers. The utility should not be authorized to charge service availability charges.

¹ See Order No. PSC-06-0170A-PAA-WS, issued March 9, 2006, in Docket No. 050281-WS, In Re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

Issue 6: Should the funds in the escrow account be disbursed and the account closed?

Recommendation: Yes, the balance in the escrow account should be disbursed to Four Points and closed. (Johnson)

Staff Analysis: Pursuant to Order No. PSC-06-0753-SC-WS, issued September 6, 2006, the utility was required to deposit 44% of the revenues collected into an escrow account during the pendency of this proceeding as security in the event a refund was required. The utility filed monthly reports as required showing the monthly deposits. As of January 31, 2007, the balance in the escrow account was \$42,020.48, based on revenues collected of \$95,501.12. According to the bank statement the actual amount in the account is \$42,230.78.

Although a specific revenue requirement was not authorized, the utility was authorized to continue collecting the rates that it had been charging its customers, which were the Polk County residential rates for water and wastewater service. Staff estimated that the utility's historical revenues did not appear to exceed the recommended revenues. Therefore, the balance in the escrow account should be returned to the utility and the escrow account should be closed administratively upon verification by staff that the utility has completed the refund addressed in Issue 2 of this recommendation.

Issue 7: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed by a substantially affected person to the proposed agency action (PAA) issues within 21 days of the issuance of the PAA Order, a consummating order should be issued upon the expiration of the protest period and the docket should be closed administratively upon verification by staff that the utility has completed the refund addressed in Issue 2 of this recommendation. (Gervasi)

Staff Analysis: If no timely protest is filed by a substantially affected person to the PAA issues within 21 days of the issuance of the PAA Order, a consummating order should be issued upon the expiration of the protest period and the docket should be closed administratively upon verification by staff that the utility has completed the refund addressed in Issue 2 of this recommendation.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for certificates to provide water and wastewater service in Polk County by Four Points Utility Corporation. | DOCKET NO. 050595-WS
FILED:

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this __ day of October, 2006, by and between members of the Island Club West Homeowners Association ("Customers"), and Four Points Utility Corporation ("Utility").

WITNESSETH

WHEREAS, the Utility currently provides water and wastewater services to Customers that own residential units in the Island West Development in Polk County, Florida ("Development");

WHEREAS, the Utility has applied to the Florida Public Service Commission ("Commission") for an original water and wastewater utility certificates to serve the Island Club West Development and for initial rates and charges ("Application").

WHEREAS, Customers of the Utility, through the Chairman of the Island Club West Homeowners Association ("Association"), Mr. Jim Brett, have filed a formal objection to the Utility's Application.

WHEREAS, the Utility and the Customers have engaged in mediation conducted by a Commission-sponsored mediator, and through that process, have arrived at this Settlement Agreement, to resolve all of the issues between the Parties;

WHEREAS, the Utility and the Customers desire to enter into this Settlement Agreement in order to avoid the time, expense and uncertainty associated with adversarial litigation and, in keeping with Commission's long-standing policy and practice of encouraging parties in protested

Exhibit "1"

proceedings to settle issues whenever possible;

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below, the Utility and Customers agree as follows:

1. Meters. The Utility agrees to utilize meters that conform to the standards adopted by the American Water Works Association as required in Rule 25-30.255, Florida Administrative Code. The Utility shall locate and install meters in accordance with the policies and regulations of the Commission including Rule 25-30.260, Florida Administrative Code.

2. Meter reading. The Utility has established a formal meter reading and training protocol which is attached hereto as Exhibit "A". Pursuant to that protocol, meters are now read on the day Polk County reads the Utility's master meter (which is now done on the 17th of each month), and bills are sent to customers within 5 days of the meter reading.

3. Meter Testing. The Utility shall test its meters in accordance with the requirements of Commission including, without limitation, Rule 25-30.263, Florida Administrative Code. Prior to conducting meter tests, the Utility shall notify the Chairman of the Association and will allow a Customer representative to monitor the test if the Association so desires.

4. Customer Meeting. Within thirty (30) days of the Commission's approval of the foregoing Settlement Agreement, the Utility shall conduct a customer meeting at which time it will instruct Customers how to independently read and review their own meters and also discuss methods by which Customers may alleviate problems arising from abnormally high usage levels. A written copy of these instructions will be given to each owner whether or not they attend this customer meeting.

5. Communications. The Utility has established and will continue to provide the Customers with a telephone number [(863) 424-0130, ext. 137 or 152] and an e-mail address (ICWHelp@islandhideaway.net) dedicated to customer service. The Utility also shall establish a 24-hour telephone number for utility service emergencies no later than fourteen (14) days after

execution of this Settlement Agreement.

6. Bill Format. Pursuant to the Customer's request, the Utility has redesigned the format of its bills so that each bill includes the serial number of the Customer's meter, and depicts the actual usage on the bill. A copy of a new bill format is attached as Exhibit "B". In addition, the Utility has retained the services a utility consultant to ensure that the books and records of the Utility are kept in accordance with the National Association of Regulatory Utility Commissioners, System of Accounts, and to enhance its billing system.

7. System Map. The Utility shall provide Mr. Jim Brett with an as-built design map of the Utility system not later than fourteen (14) days after execution of this Settlement Agreement.

8. Financial Stability. The Utility represents and warrants that it is financially able to provide a safe, continuous and reliable service to Customers. The Utility shall provide Mr. Jim Brett with a written history of payments made to Polk County for bulk water and wastewater service not later than fourteen (14) days after execution of this Settlement Agreement. In order to secure service from Polk County, the Utility has placed a deposit with Polk County in the amount of \$4,200.00. The Utility agrees to maintain that deposit at all times. The Utility further agrees to provide the Association each month with a copy of the invoice received from Polk County for bulk water and wastewater service along with a copy of the check to Polk County for payment for such services. Two weeks prior to the final decision by the Florida Commission (which is anticipated prior to March 2007), the Utility shall submit a current financial statement and balance sheet for proof of financial responsibility at that time.

9. Joint Motion to Approve Settlement Agreement. Within five (5) days of execution of this Settlement Agreement, the Parties agree to file a Joint Motion with the Commission requesting that the Commission approve the Settlement Agreement without modification and cancel the hearing scheduled in this proceeding.

10. Full and Complete Settlement. If the Commission accepts this Settlement Agreement and issues a final order, the Customer's protest shall be deemed to be withdrawn and

all issues concerning the application among and between the Parties shall be deemed to have been resolved.

11. Offer to Settle. The submission of this Settlement Agreement by the Parties is in the nature of an offer to settle. Consequently, if this Settlement Agreement is not accepted and approved without modification by Commission Order, then this Settlement Agreement shall be considered null and void and neither Party may use the attempted agreement in this or any other proceeding.

12. Authority to Execute. The undersigned personally represent that they have authority to execute this Settlement Agreement on behalf of their respective Parties. The Parties have evidenced their acceptance of and concurrence with the provisions of this Settlement Agreement by their signatures.

ISLAND WEST
HOMEOWNERS ASSOCIATION

FOUR POINTS UTILITY CORPORATION

By: Jim Brett
As Its: President

By: [Signature]
As Its: President

EXHIBIT "A"

FOUR POINTS UTILITY CORPORATION, INC.

METER READING AND TRAINING PROTOCOL

Four Points Utility Corporation, Inc. ("Utility") has retained Adam Filipe, who is primarily responsible for reading Customer meters. Mr. Filipe has been provided training to perform meter readings. The Utility has established a regular meter reading schedule and billing cycle. The Utility reads Customer meters on the day that Polk County reads the Utility's master meter (which is currently done on the 17th day of each month) and sends bills out within 5 days of that meter reading to Customers.

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. Each Customer meter has a unique serial number which the Utility uses to calculate Customer usage and issue Customer bills. In order to ensure that meter readings are assigned to the appropriate Customers, the serial number of each meter appears on the Customer's bill.

Exhibit "B"

Four Points Utility Corp.
 101 Golden Malay Palm Way
 Davenport, FL, USA 33897
 863-424-0130 x116 or x137

Invoice

Date	Invoice #
8/22/2006	UW-912-8-2006

Bill To
[REDACTED]
1 [REDACTED]
Santa Rosa, CA 95404
[REDACTED]

Year	Month	Terms
2006	8	Net 30

Description	Qty	Rate	Amount
Water Meter Serial Number - 33311864		0.00	0.00
Water Previous Reading	8,150	0.00	0.00
Water Current Reading	12,310	0.00	0.00
Water - Total Gallon Usage	4,160	0.00	0.00
Water - Base Charge	1	8.93	8.93
Water - First 10,000 gallons	4.16	2.01	8.36
Water - 10,001 to 15,000 gallons	0	2.52	0.00
Water - 15,001 to 20,000	0	3.14	0.00
Water - 20,001 to 25,000 gallons	0	3.91	0.00
Waste Water - Base Charge	1	28.21	28.21
Waste Water - 0 to 1,000 gallons - Maximum of 7,000 gallons per month	4.16	2.62	10.90

This bill applies to the dates 8/01 to 8/17/2006 for Unit 912	Total	\$56.40
	Payments/Credits	\$0.00
	Balance Due	\$56.40

FOUR POINTS UTILITY CORPORATION

DESCRIPTION OF TERRITORY SERVED

ISLAND CLUB SUBDIVISION

In Township 25 South, Range 26 East, Section 14, Polk County, Florida:

The Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$

FLORIDA PUBLIC SERVICE COMMISSION
Authorizes

Four Points Utility Corporation
pursuant to
Certificate Number 634-W

to provide water service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	050595-WS	Original Certificate

***Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Four Points Utility Corporation
pursuant to
Certificate Number 544-S

to provide wastewater service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	050595-WS	Original Certificate

***Order Number and date to be provided at time of issuance.**

FOUR POINTS UTILITY CORPORATION SCHEDULE OF WATER RATE BASE		SCHEDULE NO. 1 DOCKET NO. 050595-WS
DESCRIPTION	UTILITY REQUESTED STAFF RECOMMENDED	
UTILITY PLANT IN SERVICE		\$210,654
ACCUMULATED DEPRECIATION		(16,284)
CIAC		(190,654)
AMORTIZATION OF CIAC		15,784
WORKING CAPITAL ALLOWANCE		<u>8,387</u>
WASTEWATER RATE BASE		\$27,887

FOUR POINTS UTILITY CORPORATION SCHEDULE OF WASTEWATER RATEBASE		SCHEDULE NO. 2 DOCKET NO. 050595-WS
DESCRIPTION	UTILITY REQUESTED STAFF RECOMMENDED	
UTILITY PLANT IN SERVICE		\$213,533
ACCUMULATED DEPRECIATION		(13,299)
CIAC		(193,533)
AMORTIZATION OF CIAC		12,799
WORKING CAPITAL ALLOWANCE		<u>9,022</u>
WASTEWATER RATE BASE		\$28,522

**FOUR POINTS UTILITY CORPORATION
SCHEDULE OF COST OF CAPITAL**

Schedule No. 3

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>WEIGHT</u>	<u>COST RATE</u>	<u>WEIGHTED COST</u>
Common Equity	\$ 56,409	100.0%	8.97%	8.97%
Long and Short-Term Debt		0.0%	0.0%	0.00%
Customer Deposits		0.0%	0.0%	0.00%
		100.0%	8.97%	8.97%
Range of Reasonableness	High	Low		
Common Equity	9.97%	7.97%		

**FOUR POINTS UTILITY CORPORATION
Statement of Water Operations**

Schedule No. 4

<u>DESCRIPTION</u>	<u>UTILITY REQUESTED AND STAFF RECOMMENDED</u>
Operating Revenues	\$ 73,410
Operating and Maintenance	67,096
Depreciation Expense	500
Taxes Other Than Income	3,313
Income Taxes	<u>0</u>
Total Operating Expense	<u>70,909</u>
Net Operating Income(Loss)	<u>\$2,501</u>
Rate Base	\$ 27,887
Rate of Return	8.97%

**FOUR POINTS UTILITY CORPORATION
Statement of Wastewater Operations**

Schedule No. 5

<u>DESCRIPTION</u>	<u>UTILITY REQUESTED AND STAFF RECOMMENDED</u>
Operating Revenues	\$ 78,782
Operating and Maintenance	72,179
Depreciation Expense	500
Taxes Other Than Income	3,545
Income Taxes	<u>0</u>
Total Operating Expense	<u>76,224</u>
Net Operating Income(Loss)	<u>\$2,558</u>
Rate Base	\$ 28,522
Rate of Return	8.97%

FOUR POINTS UTILITY CORPORATION

Schedule No. 6

Monthly Service Rates

	Water		Wastewater	
	Existing Rate	Proposed Rate	Existing Rate	Proposed Rate
<u>Base Facility Charge</u>				
5/8" x 3/4	\$8.93	\$11.68	\$28.21	\$13.39
First 10,000 gallons	\$2.01	\$2.75		
Next 5,000 gallons	\$2.52			
Next 5,000 gallons	\$3.14			
Next 5,000 gallons	\$3.91			
Excess over 10,000 gallons		\$3.37		
Charge per 1,000 gallons			\$2.62*	\$3.33**

*Cap of 7,000 gallons for residential wastewater

**Cap of 10,000 gallons for residential wastewater

Typical Residential Bills

	Water		Wastewater	
	Existing Rates	Proposed Rates	Existing Rates	Proposed Rate
<u>5/8" x 3/4" meter</u>				
5,000 gallons	\$18.98	\$25.43	\$41.31	\$30.04
10,000 gallons	\$29.03	\$39.18	\$46.55	\$46.69
15,000 gallons	\$41.63	\$56.03	\$46.55	\$46.69

Docket No. 050595-WS
Date: March 01, 2007

Miscellaneous Service Charges

	Water	Wastewater
Initial Connection	\$20.00	\$20.00
Normal Reconnection	20.00	20.00
Premise Visit	20.00	20.00
Violation Reconnection	20.00	Actual
Late fee	5.00	5.00