

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

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.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 12

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, October 18, 2011

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** That brings us to Item
3 Number 12.

4 **MS. BENNETT:** Good morning, Commissioners.
5 I'm Lisa Bennett for General Counsel's Office.

6 Item 12 is staff's request for the Commission
7 to initiate a show cause proceeding against Four Points
8 Utilities. If you agree with staff's recommendation in
9 Issues 1 through 9 and Alternative 1 in Issue 10, then
10 staff will prepare an order reflecting the Commission's
11 decision and have the order served on Four Points
12 Utilities. The order is the equivalent of an
13 administrative complaint. At that point in time, it
14 will be up to the utility to respond to the complaint.

15 Four Points Utility's attorney is here and is
16 available for any questions. Staff is also available
17 for questions, and we can cover this issue-by-issue if
18 you would so desire.

19 **CHAIRMAN GRAHAM:** Let's see what Mr. Wright
20 has to say before we go down that path.

21 **MR. WRIGHT:** Thank you, Mr. Chairman and
22 Commissioners. I just have a very brief statement.

23 We, my firm and myself, are very new to this
24 case. We first spoke with Mr. Meadows this past
25 Thursday, and we actually received our engagement

1 letter from him yesterday. In light of our newness to
2 the case, we, I believe very respectfully, ask for a
3 deferral of this matter from today's agenda to the next
4 agenda to give us an opportunity to meet with staff and
5 see if we can't get this on the right track.

6 I am not here to argue with your denial of
7 the deferral at all. I respect the staff's opposing
8 it. I respect your declining to grant it. I am simply
9 here to say that we have discussed this matter as well
10 as the Bimini Bay matter covered in the next item on
11 your agenda with Mr. Meadows. He takes this seriously,
12 we take this seriously, and we are committed to making
13 it right. We will get with the staff as soon as we
14 possibly can; that is, as soon as we can make their
15 schedule -- my schedule and Mr. Meadows' schedule mesh,
16 and have some meetings and see if we can't get this on
17 the right track.

18 Thanks for the opportunity to speak to you.

19 **CHAIRMAN GRAHAM:** I guess the question I have
20 before I bring it back here to the board, this issue
21 has been around for awhile and it has been deferred
22 several times. I take it even though you are newly on
23 board, you have at least been advised of that?

24 **MR. MCGLOTHLIN:** Yes, sir. And I'm not going
25 to tell you I read every word of your staff's 74-page

1 recommendation, but I did read through it and I
2 understand that this matter has a long history. All I
3 can say is that I am new to the case, and that I have
4 discussed this very directly with Mr. Meadows, and that
5 I'm committed and he represents that he is committed to
6 getting this right.

7 **CHAIRMAN GRAHAM:** Okay. Commission board,
8 who want to starts first? Wow, everything lit up all
9 of a sudden.

10 Commissioner Brown.

11 **COMMISSIONER BROWN:** Thank you.

12 And while I understand there are a lot of
13 issues on this item, and that this has been around for
14 awhile, I do understand that -- I'm happy to see that
15 there is a presence actually being here today, and that
16 the utility has retained counsel. That being said, I
17 can sympathize and empathize with Mr. Wright's position
18 on getting familiar, and I would be amenable to
19 deferring it to the next agenda.

20 **CHAIRMAN GRAHAM:** Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you, Mr.
22 Chairman.

23 And I just want to make a few comments on
24 this item and specifically towards the proposed
25 deferral. And one of the concerns I have with the

1 deferral is there's a lot of practices that are alleged
2 in the management finding and in the recommendation,
3 and one of the concerns I have is that if this item is
4 prolonged or protracted any longer, that those actions
5 that are alleged to have been taken continue even
6 longer.

7 And so, Mr. Wright, if you can respond. You
8 mentioned that Mr. Meadows is serious about it. What
9 assurances do we have that if we defer it that these
10 practices, if they are occurring, will not continue?

11 **MR. WRIGHT:** Mr. Chairman, Commissioner
12 Balbis, Commissioners, you know, as I sit here today,
13 the only assurances that I can give you are the ones
14 that I already gave you, and that is that I have
15 discussed this very directly with Mr. Meadows and he
16 has represented to us that he is committed to getting
17 this right, and that I am committed to getting this
18 right. That's all I can give you today.

19 I'm not arguing for a deferral. I genuinely
20 appreciate Commissioner Brown's willingness to even
21 entertain the idea. I'd like the opportunity to get
22 familiar with this and to meet with the staff between
23 now and the next agenda. We are not asking for six
24 months, and if we can't get things on a better track by
25 then, then bring it back up and do what you deem fit

1 with your staff's recommendation and we'll go from
2 there. And if you vote to issue the show cause order
3 today, there will be some period of time before the --
4 you know, before the order is issued, and then some
5 further time for us to respond, and we will deal with
6 that. You are the Commission.

7 I'm not here arguing for a deferral. It was,
8 I believe, a genuinely respectful request in light of
9 my personal newness to the case, and all I can
10 represent to you is that I am committed to making this
11 right.

12 **COMMISSIONER BALBIS:** Mr. Chairman, one more
13 question for staff then. If we were to pursue or allow
14 a deferral, what would be any negatives associated with
15 that, if any?

16 **MS. BENNETT:** The next Commission agenda
17 would not be until November the 22nd, so this would
18 allow an additional month for the practices to
19 continue. Staff has been working with the utility over
20 the last several years in an attempt to gain
21 compliance. We are concerned that it will continue,
22 the violations will continue.

23 **COMMISSIONER BALBIS:** Thank you.

24 **CHAIRMAN GRAHAM:** Commissioner Edgar.

25 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

1 And Commissioner Balbis asked the question
2 that I was going to ask, and also I was going to point
3 out that although our agendas are frequently every two
4 weeks, in this instance for a variety of reasons -- we
5 are in hearing next week, et cetera -- that it is a
6 longer period of time before the next Agenda Conference
7 is scheduled. I believe it is about five weeks.

8 I am generally supportive of requests for
9 additional time in order to work through issues if,
10 indeed, there are no obvious statutory requirements or
11 no harm by such a request to any party. But I am
12 concerned, and I think this is what I'm hearing from my
13 colleagues, that the customers, from the information we
14 have, are not being well served. And that is certainly
15 one of our primary interests.

16 So to follow up on the question that
17 Commissioner Balbis asked, I'd like to pose to our
18 staff, realizing there are many, many issues that are
19 parsed out of both of these items, the Four Points and
20 the Bimini Bay, from the staff and legal perspective is
21 there almost a middle ground? I mean, are there
22 individual issues that it might be helpful in order to
23 have the Commission in the best possible posture to
24 move forward on today and defer some of the others, or
25 is it better to keep it as a package and either

1 addressed today, or if we were to decide to grant the
2 request for additional time?

3 **MS. BENNETT:** Let me think about that for
4 just a minute and confer with technical staff.

5 (Pause.)

6 **CHAIRMAN GRAHAM:** While we're conferring, one
7 of the suggestions I was going to make was with the
8 Four Points we can move forward with Issues 1 through
9 9, which for the most part are the fines. That will
10 drag this attention up forth, and Issue 10, just as
11 long as there is not any legal reason why we can't
12 defer just Issue 10, but pass staff recommendation on
13 Issues 1 through 9. And then we also can defer the
14 Bimini Bay, which would be Item Number 13. And I don't
15 know if that is a creative way of cutting this up or
16 not, but at least that puts the fines on the table and
17 it should some motivation behind this owner to start
18 making those changes immediately.

19 Ms. Bennett.

20 **MS. BENNETT:** Upon conferring with staff, we
21 are in the unusual posture of saying we really would
22 like to go ahead with this docket as a bundle. Issue
23 10, yes, it is either a decision to have the compliance
24 plan or to revoke. So perhaps you could push the date
25 out for the compliance plan. Right now it is set for

1 November the 30th in staff's recommendation. But we
2 see this as -- the show cause as a bundle. And I would
3 also like to point out that this is just the
4 authorization to basically file a complaint. If we
5 were in civil court we would be filing a complaint, the
6 attorney would be given 20 days to respond to that
7 complaint and ask for a hearing. That's the posture
8 we're in with this particular request of staff to
9 initiate the show cause proceeding.

10 Having said that, there is no statutory
11 requirement for you to act today. There is no
12 deadlines. It's just staff's concern about the
13 multitude of complaints and the fact that we have tried
14 to get compliance and have been unsuccessful on staff's
15 part, so we are turning to you to ask that you attempt
16 to get compliance with this utility.

17 **CHAIRMAN GRAHAM:** Commissioner Edgar, you
18 still have the floor.

19 **COMMISSIONER EDGAR:** I am, again,
20 understanding of the request of counsel, and
21 recognizing that you have just been retained. And I,
22 too, am glad that the utility has stepped forward in
23 that manner, to bring in some additional expertise.
24 But I continue to be concerned about the lack of
25 cooperation, and as Commissioner Balbis pointed out,

1 some of the practices that appear to be counter to the
2 way a utility should be operated and serve its
3 customers in this state.

4 So if I can piggyback onto your question, Mr.
5 Chairman, I understand that Ms. Bennett has answered my
6 question by saying keep it altogether, but yet I am
7 intrigued by the possibility that as you suggested, Mr.
8 Chairman, of moving forward on the first nine issues,
9 and perhaps holding off or deferring on the staff
10 recommendation for a compliance plan.

11 Mr. Wright, again, I fully recognize that you
12 are new to this case, but do you have a comment on
13 Issue 10 specifically, or the possibility of us moving
14 forward on the fines and the show cause, but giving you
15 additional time to work on the next steps?

16 **MR. WRIGHT:** I think, as I said, I'm not here
17 arguing for a deferral, Commissioners.

18 **COMMISSIONER EDGAR:** I do understand, but yet
19 you are here.

20 (Laughter.)

21 **MR. WRIGHT:** I'm here to articulate the
22 message that I have stated, and that is that we take
23 this seriously and we are trying to get it right.
24 Here's something, I think -- on Issue 10, I think that
25 part of the commitment at least I am making to you is

1 that I'm going to get with my client and we are going
2 to work toward getting this right. Logically that
3 includes working toward a compliance plan. So
4 certainly, I think, we would prefer to be in the
5 posture of working towards a compliance plan rather
6 than be in the middle of a revocation proceeding. So
7 if you wanted to go -- if you go forward with 1 through
8 9, perhaps you should go forward with 10 and tell us to
9 get to work on a compliance plan. If you are going to
10 defer all of them, that's great. I'm not arguing for
11 it.

12 You know, maybe on the show cause part of
13 Issue 12 you could give us maybe some more time to
14 respond to the show cause order. If you decide to vote
15 to issue that order today, maybe you could give us more
16 than the 21 days to respond. But that's just a
17 thought, and maybe if you would be willing to defer the
18 Bimini Bay matter, that would be great. But, you know,
19 again, as I frequently say, y'all are the Public
20 Service Commission, and I am here telling you I'm
21 committed to getting it right, and we will follow
22 whatever you say.

23 **COMMISSIONER EDGAR:** Mr. Chairman and
24 Commissioners, I do find myself in somewhat of an
25 uncomfortable position because, again, I am generally

1 supportive of a request for more time. I have often
2 about been in the position of asking for more time on a
3 variety of things, and I recognize the position that
4 Mr. Wright is in being new to the case. But, yet, from
5 the information that we have before us it does appear
6 that there are significant issues, and it may be that
7 for both the operator and primarily for the customers,
8 recognizing and respecting the commitment that Mr.
9 Wright has made, that we are better off to move forward
10 today. And that's kind of what I'm thinking right now,
11 but I am certainly open to hearing other thoughts.

12 **CHAIRMAN GRAHAM:** Thank you, Commissioner
13 Edgar.

14 Commissioner Brown.

15 **COMMISSIONER BROWN:** Thank you.

16 And I appreciate Ms. Bennett's response to
17 some of the questions here. Originally I was amenable
18 to providing additional time, because like Commissioner
19 Edgar, I want to make sure that we have the most
20 accurate information that we are hearing today. And I
21 did want to hear from the utility. I had questions on
22 the show cause -- on some of the show cause issues, and
23 I want to direct -- I wanted information from the
24 utility. But I am prepared to move forward with these
25 issues and with the case as a whole. I think we have a

1 lot of information and documentation to support staff's
2 recommendation at this point, and I would be willing to
3 move forward.

4 **CHAIRMAN GRAHAM:** Commissioner Balbis.

5 **COMMISSIONER BALBIS:** Thank you, Mr.
6 Chairman.

7 And I think Mr. Wright hit it on the head.
8 If we were to pursue Alternative 2, which is the moving
9 forward with the revocation proceeding, I would not be
10 comfortable with moving forward without allowing
11 counsel time to get familiar with the case.

12 But speaking for me personally, I believe
13 Alternative 1 with the additional time as requested
14 would provide the opportunity for us to move forward to
15 provide additional assurances for the ratepayers that
16 hopefully these practices will stop and still allow
17 counsel get up to speed on that.

18 So to your recommendation on holding off on
19 Issue 10, I would move that we are in agreement with
20 staff's recommendations on Issues 1 through 9, and
21 Issue 10 to go with Alternative 1 with the additional
22 time as requested. And I guess a question for Mr.
23 Wright, how much time over the 21 days would you feel
24 --

25 **MR. WRIGHT:** I didn't have a particular

1 amount of time. Perhaps an extra two weeks or three
2 weeks beyond the 21. Thirty-five or 42 days as opposed
3 to the 21 in the recommendation.

4 **COMMISSIONER BALBIS:** And for staff, how much
5 time do you think is appropriate?

6 **MS. BENNETT:** We're comfortable with that. I
7 was looking to the Deputy General Counsel see if we can
8 waive the 21-day service. I believe we can.

9 **MS. HELTON:** I can't think of a reason why we
10 can't, especially if everyone here is in agreement with
11 that.

12 **MS. BENNETT:** So to go ahead and give them,
13 perhaps, 30 additional days. Instead of 21 days,
14 30 days to respond to the complaint, or 45. Either one
15 would be fine.

16 **COMMISSIONER BALBIS:** Okay. Then with that,
17 I recommend that we move forward with staff's
18 recommendation on all issues, and on Issue 10, go with
19 Alternative 1 with a 45-day response time.

20 **CHAIRMAN GRAHAM:** It has been moved and
21 seconded, staff's recommendations on all issues, with
22 Issue 10 being recommendation for Alternative 1 and
23 extending the days to 45 days. Now, any discussions on
24 that motion?

25 **MS. BENNETT:** Mr. Chairman, may I make sure I

1 understand. The 45-day extension is for -- the utility
2 has an opportunity to respond to all of the issues in
3 the complaint, so we are granting, instead of 21 days,
4 45 days for him to respond to all issues in the
5 complaint.

6 **CHAIRMAN GRAHAM:** That's correct. And not 45
7 additional days on top of the 21, but just 45 days.

8 Commissioner Edgar.

9 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

10 I just want to make sure. I'm supportive, I
11 just want to make sure I'm clear that it would be for
12 Issues 1 through 9, which currently the staff
13 recommendation requires the utility to respond within
14 20 days, but that we would be changing that to 45 days
15 for Issues 1 through 9. Then on Issue 10, with
16 Alternative 1, requiring a compliance plan that's kind
17 of a separate timing, separate date. And remind me,
18 I've got it here somewhere, but as of now the staff
19 recommendation requires a compliance plan by what date?

20 **MS. BENNETT:** November 30th. And Ms. Daniel
21 has just confirmed that if you push that into the first
22 week of January, that would be fine.

23 **COMMISSIONER EDGAR:** Commissioner Balbis,
24 with your motion I was unclear as to what the timing
25 requirement would be for the compliance plan on Issue

1 10.

2 **COMMISSIONER BALBIS:** Thank you,
3 Commissioner.

4 And I agree, the intent was for the 45 days
5 to respond to the items, but I would amend my motion to
6 include the submittal of this compliance plan for the
7 beginning of January as recommended by staff, as well.

8 **COMMISSIONER EDGAR:** Is that January 1,
9 January 15, just --

10 **MS. BENNETT:** Let's go with January 15.

11 **COMMISSIONER BALBIS:** So then I formally
12 amend my motion to move forward with staff's
13 recommendation on all issues with the changes on Issues
14 1 through 9 to change the response date to 45 days
15 rather than 21 days, and the submittal of the
16 compliance plan in Issue 10 for Alternative 1 to be
17 January 15. And that is my motion.

18 **COMMISSIONER EDGAR:** I appreciate very much
19 the clarification. Thank you. I am supportive and
20 will be glad to vote for that at the appropriate time.
21 And would just, if I may, ask the staff if we have
22 covered all of the issues and make sure that Mr. Wright
23 is clear, as well.

24 **MR. WRIGHT:** I'm clear. Thank you very much,
25 Commissioner.

1 **MS. BENNETT:** We have covered everything.

2 **COMMISSIONER EDGAR:** Thank you.

3 **CHAIRMAN GRAHAM:** I guess my question to
4 staff, so, where is your level of comfort with this
5 amount of extension?

6 **MS. BENNETT:** Staff appreciates that the
7 Commission is giving the utility its direction, and I
8 believe that with the Commission's involvement and the
9 force of the Commission behind it, we will be able to
10 work with the utility to get it into compliance.

11 **CHAIRMAN GRAHAM:** Is there anything extra or
12 different that we need to put into this, I guess, to
13 give you a little strength as you're negotiating, or is
14 everything fine the way it is?

15 **MS. BENNETT:** The recommendation and the
16 order that you have approved institutes a \$77,000 fine
17 against the utility, if we end up issuing the order at
18 the end of the hearing process. So with the fine, plus
19 the compliance plan, plus the directions to file the
20 fine as a statutory lien, if that is indeed imposed
21 against the utility, I think that you have exercised
22 the muscle that we needed to get this utility to
23 comply.

24 **CHAIRMAN GRAHAM:** I mean, I understand that
25 there's -- the staff has gone around and around and

1 around on this issue. And it is kind of to the point
2 where you guys are looking to move forward. So I can
3 appreciate the position that you guys are in. I just
4 want to make sure that we are not undermining anything
5 by giving a little bit more time. And I do appreciate
6 your response.

7 Commissioner Balbis.

8 **COMMISSIONER BALBIS:** Thank you, Mr.
9 Chairman.

10 I just wanted to add a comment for Mr. Wright
11 and the utility. Obviously we have concern that the
12 practices that are alleged in the management audit and
13 in our other findings, if they are occurring, which
14 obviously imposing this fine agrees that they are, this
15 does not mean that they can continue until
16 January 15th. And if the utility is serious, we would
17 demand that these practices be ceased and the utility
18 continue working towards providing quality service.

19 **MR. WRIGHT:** I certainly understand that,
20 Commissioner. And, again, my commitment is to work as
21 hard and as rapidly as I and we can to get this right.

22 **COMMISSIONER BALBIS:** Thank you.

23 **CHAIRMAN GRAHAM:** Commissioner Edgar.

24 **COMMISSIONER EDGAR:** Thank you.

25 I did just have one additional question of

1 clarification for my part. For Issues 1 through 9, the
2 45 days for response, would that be 45 days from the
3 vote, or 45 days from the date the order is issued?

4 **MS. BENNETT:** It's actually 45 days from the
5 date the order is served on the utility, so you are
6 adding -- it will be 65 days, basically.

7 **COMMISSIONER EDGAR:** I just wanted to clear
8 on the timing, and so that we were all clear on the
9 time frame that we are working within. And I can
10 support the motion.

11 **MS. BENNETT:** I'm sorry.

12 **CHAIRMAN GRAHAM:** Ms. Bennett.

13 **MS. BENNETT:** There are so many issues here
14 and so many problems with -- there's one timing of the
15 regulatory assessment fees on Issue 8 that we've
16 required -- there have not been any -- there has been
17 no payment of regulatory assessment fees for this year.
18 The fine continues to accrue each and every day. Right
19 now in Issue 8 we have said that he must file by
20 November 30th, 2011, the regulatory assessment fees,
21 penalties, and interest. I don't think that perhaps
22 that date should change.

23 **CHAIRMAN GRAHAM:** I can't speak for the
24 original motioner, but I don't think that we are going
25 to change that date.

1 **COMMISSIONER BALBIS:** No, that is correct.
2 The additional timing is to allow Mr. Wright to get
3 acclimated with the case and to respond, but that date
4 should remain the same.

5 **CHAIRMAN GRAHAM:** Was that clear?

6 **MS. BENNETT:** Yes. Thank you.

7 **CHAIRMAN GRAHAM:** Okay. It has been moved
8 and seconded, staff recommendation on all issues, with
9 Issue 10 going with Option Number 1, and extending the
10 show cause dates from 21 to 45 days, and for Option
11 Number 1, the compliance plan, to be subject to
12 January 15th.

13 **MS. BENNETT:** January 15th, that's correct.

14 **CHAIRMAN GRAHAM:** January 15th. Okay.

15 Any further discussion? Seeing none. All in
16 favor say aye.

17 (Unanimous affirmative vote.)

18 **CHAIRMAN GRAHAM:** Any opposed?

19 By your action, you've approved what I just
20 said.

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STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS ^{25th} 21st day of October, 2011.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
850) 413-6732