

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: January 25, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Janjic, Crawford) *JJC*
Division of Economics (Daniel) *PD*
Division of Engineering (Lewis, Graves, Knoblauch) *CKL TD*

RE: Docket No. 20110254-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.

Docket No. 20170270-WS – Application for acknowledgment of transfer of receivership to Polk County, and cancellation of Certificate Nos. 634-W and 544-S, by Four Points Utility Corporation.

AGENDA: 02/06/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners (20110254-WS)
Administrative (20170270-WS)

PREHEARING OFFICER: Administrative (20110254-WS)
Administrative (20170270-WS)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Four Points Utility Corporation (Four Points or Utility) is a Class C water and wastewater utility located in Davenport in northeast Polk County (County). The Utility purchases water and wastewater service from Polk County and resells those services to its customers. The Utility

serves approximately 241 residential water and wastewater customers and a clubhouse in the Island Club West Resort and Spa townhome development (Island Club West). Four Point's 2016 annual report indicates that the Utility had combined gross operating revenues of \$295,998 and a net operating loss of \$89,909.

In 2007, the Utility was granted Certificate Nos. 634-W and 544-S. In 2011, the Commission issued Order No. PSC-11-0541-SC-WS, and initiated a show cause proceeding against Four Points, for potential violations of numerous Commission rules and statutes related to meter reading, customer billing, record keeping, delinquent accounts, annual reports, and regulatory assessment fees (RAFs).¹ While the show cause docket remained open, on January 23, 2012, David Meadows, the Utility owner, formally filed notice of abandonment of the Utility effective March 23, 2012. Subsequently, on March 7, 2012, Polk County filed a petition with the Circuit Court for the appointment of a receiver in accordance with Section 367.165, Florida Statutes (F.S.), and by Judicial Order² dated March 19, 2012, the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida (Circuit Court), appointed Michael Smallridge as the receiver. The Commission acknowledged the abandonment and appointment of receiver by Order No. PSC-12-0347-FOF-WS, issued July 5, 2012, in Docket No. 20120030-WS, In re: Notice of abandonment of water and wastewater systems in Polk County by Four Points Utility Corporation and Bimini Bay Utilities Corporation. The show cause proceeding is discussed further in Issue 2.

On September 29, 2016, Michael Smallridge and Polk County filed a Joint Motion for Appointment of Polk County as Successor Receiver for the Four Points Utility Corporation and the Bimini Bay Utilities Corporation, and by Order³ dated November 4, 2016, the Circuit Court appointed Polk County as the successor receiver. On November 14, 2016, the Commission received a filing from Michael Smallridge with documentation of the Circuit Court Order as well as other information related to the transfer of receivership.⁴ The transfer of receivership to Polk County is addressed in Issue 1 (Docket No. 20170270-WS). Pursuant to Section 2.07(C)(4)e of the Administrative Procedures Manual (APM), the appointment of receivers and the cancellation of certificates may be administratively acknowledged. However, the APM additionally states that such matters shall be brought to the Commission for consideration if they appear to be controversial or unique in nature. Staff believes that Docket No. 20170270-WS is unique in nature because of the related show-cause docket, discussed in Issue 2. The Commission has jurisdiction pursuant to Sections 367.022 and 367.161, Florida Statutes (F.S.).

¹ Issued November 22, 2011, in Docket No. 20110254-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.

² Document No. 02089-2012, in Docket No. 20110254-WS.

³ Document No. 08777-2016, in Docket No. 20170270-WS.

⁴ Id.

Discussion of Issues

Issue 1: Should the Commission acknowledge the transfer of receivership of Four Points Utility Corporation from Michael Smallridge to Polk County, and cancel Certificate Nos. 634-W and 544-S?

Recommendation: Yes. Sufficient documentation of the Court Ordered transfer of receivership has been provided to the Commission. Additionally, information regarding the disposition of customer deposits and regulatory assessment fees has been provided. Therefore, pursuant to Section 367.022(2), F.S., the Commission should acknowledge the transfer of receivership of Four Points Utility Corporation from Michael Smallridge to Polk County and cancel Certificate Nos. 634-W and 544-S. (Lewis, Knoblauch)

Staff Analysis: On September 9, 2016, Michael Smallridge and Polk County filed a Joint Motion for Appointment of Polk County as Successor Receiver for the Four Points Utility Corporation and the Bimini Utilities Corporation. Based on documentation⁵ submitted to the Circuit Court, in support of Polk County's appointment as Successor Receiver for the Utility, Mr. Smallridge made system repairs to improve service and to better account for water being used by Utility customers. Additionally, a rate increase was approved by the Commission in 2013.⁶ Despite the system repairs and rate increase, the Utility has been unable to pay the monthly charges for the water and wastewater services purchased from Polk County. The documentation submitted to the Circuit Court further indicates that Mr. Smallridge believes it is in the best interest of the Utility's customers that Polk County be named Successor Receiver. The Court granted the motion and Polk County was appointed Successor Receiver effective January 1, 2017.

Mr. Smallridge's filing with the Commission included documentation of the Circuit Court's decision as well as statements regarding the disposition of customer deposits and regulatory assessment fees. Customer deposits were refunded during the last billing cycle while Michael Smallridge was the receiver. RAFs were paid on March 10, 2017, in the amounts of \$4,454.28 and \$8,865.63 for water and wastewater services, respectively. Staff additionally notes that the Utility's 2016 Annual Report was filed with the Commission on March 8, 2017.

Pursuant to Section 367.022, F.S., systems owned, operated, managed or controlled by governmental authorities are not subject to regulation by the Commission. Therefore, staff recommends the Commission acknowledge the transfer of receivership of Four Point's water and wastewater systems from Michael Smallridge to Polk County and cancel Certificate Nos. 634-W and 544-S.

⁵ See Document No. 07830-2016, in Docket No. 110254-WS.

⁶ See Order No. PSC-13-0449-PAA-WS Issued October 3, 2013, in Docket No. 130161-WS In re: Application for staff assistance for alternative rate setting case in Polk County by Four Points Utility Corp.

Issue 2: Should the Commission pursue any further action against Four Points Utility Corporation?

Recommendation: No. Staff recommends that no further action against Four Points Utility Corporation is necessary. (Janjic)

Staff Analysis: In 2011, the Commission initiated a show cause proceeding against Four Points for potential violations of numerous Commission rules and statutes related to meter reading, customer billing, record keeping, delinquent accounts, annual reports, and regulatory assessment fees. An order initiating a show cause proceeding against the Utility was issued November 22, 2011.⁷ A verified response by the Utility was filed on January 17, 2012 disputing many of the factual allegations set forth in the Show Cause Order.⁸ Action on the docket was abated when the Utility was abandoned in March 2012, to allow staff to monitor the receivership proceedings. The outstanding RAFs, penalties and interest were addressed administratively, and as of the date of this filing, the Utility is current with respect to payment of its RAFs and the filing of its annual reports.

As previously discussed, Mr. Meadows, who originally owned the Utility and whose operation of the Utility necessitated the opening of the show cause docket, abandoned the system in March 2012. The Utility has since been in receivership, and has met all regulatory requirements since that time. Additionally, Polk County has agreed to serve as successor receiver for Four Points. Accordingly, as discussed in Issue 1, staff is recommending that the Utility's certificates should be cancelled. Based on the totality of the circumstances of this case, staff recommends that no further action is necessary with respect to the Utility.

⁷ See Order No. PSC-11-0541-SC-WS, issued November 22, 2011, in Docket No. 110254-WS, In re: Order Initiating Show Cause Proceeding Against Four Points Utility Corporation.

⁸ See Document No. 00327-2012, in Docket No. 110254-WS.

Issue 3: Should these dockets be closed?

Recommendation: Docket Nos. 20110254-WS and 20170270-WS should be closed. (Janjic).

Staff Analysis: If the Commission approves staff's recommendation in Issues 1 and 2, no further action is necessary and the dockets should be closed.