

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of KINGS POINT)	DOCKET NO. 891323-WS
UTILITIES for transfer of majority)	
organizational control of Certificates)	ORDER NO. 24217
Nos. 437-W and 386-S in Osceola County)	
from Charles E. and Martha D. Barkley)	ISSUED: 3/11/91
and Sidney D. and Marcia Bronson to)	
Walter D. Medlin)	
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

ORDER REQUIRING VIABILITY
REPORT AND PERMIT APPLICATION

BY THE COMMISSION:

Kings Point Utilities (Kings Point) is a Class C utility which provides water and wastewater service under Certificates Nos. 437-W and 368-S to approximately 155 single family homes in Osceola County. On November 22, 1989, Kings Point filed an application for transfer of majority organizational control from Charles E. and Martha D. Barkley, and Sidney D. and Marcia Bronson, to Walter D. Medlin. By Order No. 23120, issued June 26, 1990, we approved the transfer of majority organizational control on a provisional basis, subject to Kings Point meeting certain very definite conditions. Chief among these was that Kings Point apply for a Department of Environmental Regulation (DER) permit to upgrade its wastewater treatment and disposal facilities, and to file a copy of the permit application with this Commission, along with a schedule for making the required water system improvements, on or before September 24, 1990.

Also by Order No. 23120, we noted that the current and prior owners of Kings Point had allowed the utility systems to deteriorate to such an extent that substantial investment will be required to bring the systems into compliance with DER standards, and expressed concern over passing these costs onto the utility

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ratepayers. Accordingly, we ordered Kings Point to develop and submit, also on or before September 24, 1990, a long-range plan to become a viable utility or to become part of another viable utility. Finally, we indicated that if Kings Point did not meet these conditions, we would reevaluate whether the transfer is, in fact, in the public interest.

On November 6, 1990, following the expiration of our deadline, Kings Point requested an extension of time, until January 1, 1991, to comply with the requirements of Order No. 23120. On November 21, 1990, the City of Kissimmee filed a response in opposition to Kings Point's request. Our Staff reports that it originally intended to bring this matter to our attention, with a recommendation that we deny Kings Point's request. However, due to certain concerns raised by counsel for DER, Staff postponed its recommendation pending a trial between DER and Kings Point. Accordingly, by default, Kings Point received its extension of time. Nevertheless, the utility still has not complied with any of the requirements of Order No. 23120.

On January 11, 1991, the Circuit Court for the Ninth Judicial Circuit issued a final judgment in DER's complaint against Kings Point, a copy of which is appended to this Order as Attachment A. According to the terms of the judgment, Kings Point is required to complete improvements to the water system, including installing a source of auxiliary power, maintaining the pressure tank in good working condition and completing construction of the looping of the distribution lines, within 45 days. Within 60 days, it is required to submit a completed application for a DER construction permit to improve the wastewater treatment and disposal systems, which improvements must be completed within 300 days. Finally, the Court also levied a fine of \$89,571 against Kings Point for its continued and ongoing violations of DER rules and requirements and court costs.

Although we are somewhat doubtful whether Kings Point will comply with the Court's judgment, we will, nevertheless, postpone our reevaluation of this transfer until we determine whether the utility has any intention of complying. The first increment of the Court's judgment is for Kings Point to complete the required improvements to the water system within 45 days, or no later than by February 25, 1991. If it fails to meet this deadline, we will

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take such failure to mean that Kings Point does not intend to comply with the judgment.

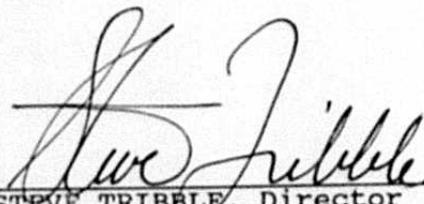
In addition to the above, we note that the Court's judgement only addresses two of our concerns, and not that of Kings Point's long-term viability. Therefore, as further evidence of Kings Point's good faith, it shall submit the long-range viability plan, as required by this Commission by Order No. 23120, no later than February 25, 1991, the same date that the water system improvements are required to be completed. Further, Kings Point shall file a copy of its application for a DER construction permit with this Commission, as also required under the provisions of Order No. 23120, no later than the date that the application is required to be filed with DER.

It is, therefore,

ORDERED by the Florida Public Service Commission that Kings Point Utilities shall submit a long-term viability plan, as set forth in this Order and more fully in Order No. 23120, no later than by February 25, 1991. It is further

ORDERED that Kings Point Utilities shall submit a copy of its application for a DER wastewater construction permit to this Commission no later than the date that the application is to be filed with DER in accordance with the Court's judgment.

By ORDER of the Florida Public Service Commission, this 11th day of MARCH, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Director, Division of Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.

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IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR
OSCEOLA COUNTY, FLORIDA

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JAN 23 1991

Case No. C89-174 Service Commission
Division of Water and Sewer

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Plaintiff,

KINGS POINT UTILITY, INC.,
WALTER LEE MEDLIN, and
WILLIAM R. WRIGHT, as Trustee,

Defendants.

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JAN 18 1991

Dept. of Environmental Reg.
Office of General Counsel

FINAL JUDGMENT

THIS CAUSE initially came before the Court for trial on October 16, 1990, at which time Plaintiff, State of Florida Department of Environmental Regulation ("FDER"), put on its direct case. Trial as to Defendant, Kings Point Utility, Inc., was completed on December 20, 1990. This final judgment is entered only with respect to DER's claims against Defendant, Kings Point Utility, Inc.

Based on the evidence presented and the matters established in the below-referenced order granting motion for partial summary judgment, the court FINDS:

1. This Court has subject matter and personal jurisdiction and venue in this Court is proper.
2. Defendant, Kings Point Utility, Inc., operates the water and sewer systems serving the Kings Point Subdivision, Kings Highway, Kissimmee, Osceola County, Florida.

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OFFICE OF GENERAL COUNSEL

ATTACHMENT A

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3. By order entered October 11, 1990, the Court granted a motion for partial summary judgment, establishing the liability of defendant, Kings Point Utility, Inc., on Counts I-XXI of DER's Second Amended Complaint.

4. Several of the water system violations established by the order granting motion for partial summary judgment are continuing in nature. These include certain physical violations at the plant, including failure to provide a minimum two drinking water supply wells (Count XI); failure to provide a source of adequate auxiliary power equipped with an automatic start-up device (Count XII); and a minor violation involving rust at the pressure tank (Count XIII). The continuing violations also include failure to establish a required cross-connection control program (Count X) and operation without a clearance letter (Count XIV). In addition, the system has continued to fail to meet the requirement for a minimum 0.2 mg/l chlorine residual throughout the distribution system at all times (Count I).

5. Defendant, Kings Point Utility, Inc., has also failed to comply with the order dated June 21, 1990, which directed it by no later than August 5, 1990 to implement and place into service the looping of the water distribution lines, as approved by DER, as well as to complete satisfactory bacteriological and pressure testing in accordance with DER rules, provide an engineer's certification of completion, and receive a DER letter of clearance with respect to these modifications. Compliance with these requirements would have addressed the continuing chlorine residual problem (Count I) and the continuing operation without a clearance letter (Count XIV). Pursuant to the terms of the order, Defendant, Kings Point Utility, Inc., owes DER a stipulated penalty of \$150.00 per day past August 5, 1990 in which these requirements were not complete.

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6. In addition to the continuing water system violations, the following previous violations relating to the water system were established by the order granting motion for partial summary judgment: failure to comply with boil water notice chlorine standards (Count II); excessive coliform bacterial levels (Count III); failure to submit satisfactory bacteriological test results (Count IV); failure to provide a certified operator on-site to make at least one weekend visit and perform weekend plant operation and maintenance requirements (Count V); excessive odor level (Count VI); failure to equip the system with an accurate metering device (Count VII); failure to construct a concrete platform or apron at the top of the well casing (Count VIII); and failure to install a check valve between the raw water sampling tap and the aerator (Count IX).

7. Several of the sewer system violations established by the order granting motion for partial summary judgment are continuing in nature. These include failure to submit a construction permit application for bringing the wastewater facilities into compliance (Count XVIII); unpermitted overflow from the percolation ponds to a ditch ultimately flowing to Lake Tohopekaliga (Count XIX); failure to effectively treat raw sewage entering the wastewater plant, producing substandard effluent in violation of state standards, including standards for BOD and TSS (Count XX); and operation of the treatment and disposal facility without the required DER permit (Count XXI). The order granting motion for partial summary judgment also established a previous violation of failure to keep blowers in service at the wastewater plant (Count XVII).

8. Defendant, Kings Point Utility, Inc., entered an administrative Consent Order with DER which was effective on May 19, 1989. The Consent Order

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was intended to address problems at the sewer system. The order granting motion for partial summary judgment encompasses certain violations of this Consent Order, i.e., the continuing failure to pay to DER the amount of \$3,500 as required under the Consent Order (Count XVI); the previous failure to timely submit an engineering report and proposal for improving the sewer system (Count XV); and the continuing failure to submit a construction permit application for bringing the wastewater facilities into compliance (Count XVIII).

9. In Count XXII, DER seeks to enforce paragraph 26 of the Consent Order, which required payment of \$100 per day per violation of the Consent Order. This provision applies to the violations of the Consent Order set forth in paragraph 8 above.

10. Paragraph 20 of the Consent Order allows DER to seek judicial resolution of the sewer system violations due to the failure of Defendant, Kings Point Utility, Inc., to receive from DER an intent to issue a construction permit to modify the sewer system facilities within 150 days of the effective date of the Consent Order on May 19, 1989.

It is hereby ORDERED and ADJUDGED:

I. Judgment is ENTERED in favor of DER against Defendant, Kings Point Utility, Inc., on Counts I-XXII of DER's Second Amended Complaint.

II. A permanent injunction is ENTERED in favor of DER against Defendant, Kings Point Utility, Inc., requiring Defendant, Kings Point Utility, Inc., to perform the following corrective actions within the specified time periods:

(a) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall install and place into service a minimum two drinking water supply wells at the Kings Point water system, in accordance with Florida Administrative Code ("FAC") Rule 17-555.315(1).

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(b) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall install and place into service a source of adequate auxiliary power equipped with an automatic start-up device to the Kings Point water system, in accordance with FAC Rule 17-555.320(6).

(c) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall maintain the pressure tank at the Kings Point water system in good operating condition, in accordance with FAC Rule 17-555.350(1), through removal of the rust.

(d) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall establish a routine cross-connection control program for the Kings Point water system, in accordance with FAC Rule 17-555.360(2).

(e) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall complete construction and place into service the looping of the Kings Point water distribution lines, as approved by DER, as well as complete satisfactory bacteriological and pressure testing in accordance with DER rules, provide an engineer's certification of completion, and receive a DER letter of clearance with respect to these modifications in accordance with FAC Rule 27-555.345. The Court reserves jurisdiction to order further actions if these improvements fail to ensure a minimum 0.2 mg.l chlorine residual or its equivalent throughout the Kings Point distribution system at all times, in accordance with FAC Rule 27-555.350(1).

(f) Within 60 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall submit a complete construction permit application to DER for bringing the Kings Point sewer system into compliance with FAC Chapters 17-4 and 17-600. The modifications encompassed within the

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application shall include but not be limited to all modifications necessary to ensure: (i) the effective treatment of effluent entering the treatment plant in accordance with the treatment standards in FAC Chapter 17-600, including but not limited to standards for BOD and TSS effluent pursuant to FAC Rule 17-600.420(1); and (ii) no more unpermitted overflows from the system's percolation ponds or other unpermitted disposals or discharges of wastewater.

(g) Within 300 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall obtain a DER construction permit, and shall construct and shall place into operation in accordance with the permit, all modifications to the Kings Point sewer system necessary to ensure compliance with FAC Chapters 17-4 and 17-600. The modifications shall include but not be limited to all modifications necessary to ensure: (i) the effective treatment of effluent entering the treatment plant in accordance with the treatment standards in FAC Chapter 17-600, including but not limited to the standards for BOD and TSS effluent pursuant to FAC Rule 17-600.420(1); and (ii) no more unpermitted overflows from the system's percolation ponds or other unpermitted disposals or discharges of wastewater.

(h) Within 35 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall dispose of all sewage skimmings at the sewer plant in accordance with state regulations and thereafter continue to dispose of all sewage skimmings in accordance therewith.

(i) As an interim measure prior to implementation of the permitted modifications pursuant to subparagraphs (f) and (g) above, and within 35 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc. shall (i) keep the percolation ponds clear of vegetation; (ii) install a staff gauge at each percolation pond, record the daily pond levels, and provide the

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levels with the monthly operating reports to DER; and (iii) with a licensed hauler, transport and dispose in accordance with state regulations any wastewater in the percolation ponds which is at a higher level than one foot below the lowest discharge point of each pond, and notify DER within 24 hours of all such episodes of wastewater at or above this level and each such transportation and disposal of wastewater, including the name of the hauler, the quantity hauled, and the method and place of disposal.

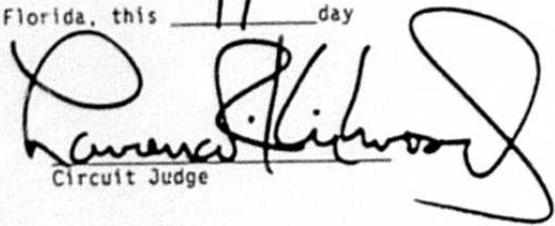
III. The injunctive relief granted pursuant to this Final Judgment shall be binding on Defendant, Kings Point Utility, Inc., its officers, agents, servants, employees and attorneys and on those persons in active concert or participation with them who receive actual notice of the injunction.

IV. Monetary judgment is hereby ENTERED in favor of DER against Defendant, Kings Point Utility, Inc., in the total amount of \$89,571.00 for which let execution issue. DER is being awarded this total amount based on the following: (i) with respect to the water system violations, \$30,000.00 in civil penalties under Section 403.860(1), Florida Statutes, and \$10,650.00 in stipulated penalties under the Court's order dated June 21, 1990; (ii) with respect to the sewer system violations, \$40,000.00 in civil penalties under Section 403.141(1), Florida Statutes, and \$5,900.00 in stipulated payments under the administrative Consent Order entered with DER on May 19, 1989; and (iii) \$3,021.00 in costs and expenses under Section 403.141(1), Florida Statutes.

V. The Court reserves jurisdiction to enforce the terms of this Final Judgment and to enter such further orders as are necessary to bring the Kings Point water and sewer system into compliance with Chapter 403, Florida Statutes.

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DONE AND ORDERED in Osceola County, Florida, this 11 day
of ~~November~~ Jan. 1991



A large, stylized handwritten signature in black ink, appearing to read 'Lawrence P. Kilwood'.

Circuit Judge

conformed copies furnished to:
Steven A. Medina, Esq.
Martin Friedman, Esq.
Stephen Miles, Esq.
Walter Lee Medlin