

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Certificates)
to provide Water and Wastewater)
Service in Clay County by Point)
Water and Sewer, Inc.)
_____)

DOCKET NO. 961321-WS
DATE SUBMITTED FOR FILING:
June 8, 1997

**MOTION FOR LEAVE TO AMEND TESTIMONY OF STEVEN C. GLENN
BY POINT PROPERTY OWNERS ASSOCIATION, INC.**

The Point Property Owners Association, Inc. ("Association"), by and through its undersigned attorneys, hereby files this motion for leave to amend the testimony of Steven C. Glenn.

1. On May 5, 1997, the Association filed its notice of filing and the original and fifteen (15) copies of the testimonies and exhibits of Mark J. Easterling, Steven C. Glenn, Roy L. Lewis III, Carol Matthews, and Kristen A. Smeltzer.

2. Subsequent to the filing of the testimony, one of the undersigned attorneys was notified that the testimony of Steven C. Glenn as filed was incomplete. It was determined that the last page (page 15) was inadvertently omitted from the copies of the testimony of Steven C. Glenn.

3. Attached to this motion is a complete copy of the testimony of Steven C. Glenn, including page 15.

4. The exhibits filed with the original testimony on May 5, 1997, were correct. The previously submitted original exhibits should be attached to this amended testimony of Steven C. Glenn.

5. Mr. Glenn is one of the main witnesses testifying on behalf of the Association, as well as being its President. The

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Association will be prejudiced without the benefit of his full and complete testimony.

6. Accordingly, the Association requests that the Commission grant this motion and replace the previous testimony of Steven C. Glenn with the attached amended testimony of Steven C. Glenn and attach the same to his previously filed exhibits.

7. No other parties would be prejudiced by granting this motion.

WHEREFOR, the grounds set forth above, the Point Property Owners Association, Inc., hereby requests that the Commission grant this motion for leave to amend and perform the actions requested above.

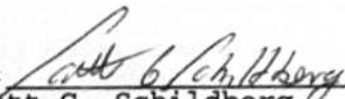
Dated this 8th day of June, 1997.

Respectfully submitted,

HAYES & LINDELL, P.A.

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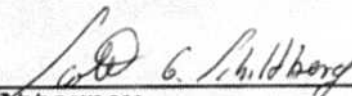
MARTIN, ADE, BIRCHFIELD &
MICKLER, P.A.

By: 
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Attorneys for The Point Property

Certificate of Service

I HEREBY CERTIFY that the original and fifteen copies of the Motion For Leave to Amend the Testimony of Steven C. Glenn by Point Property Owners Association, Inc. has been furnished by Express Mail this 8th day of June, 1997, to Blanca Bayo, Director, Division of Records and Reporting, Florida Public Service Commission, 2450 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and copies of the foregoing has been furnished to J. Michael Lindell, Esquire, Hayes & Lindell, P.A., 233 E. Bay Street, Suite 620, Jacksonville, Florida 32202; Kathleen M. Johnson, Staff Counsel, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Margaret O'Sullivan Parker, Staff Counsel, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; and Douglas H. Reynolds, Esquire, Cox & Reynolds, 4875 North Federal Highway, 10th Floor, Fort Lauderdale, Florida 33308, Attorneys for Point Water and Sewer, Inc., by U.S. Mail, this 8th day of June, 1997.



Attorney

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In re: Application for Certificates)
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**TESTIMONY OF STEVEN C. GLENN
ON BEHALF OF
THE POINT PROPERTY OWNERS ASSOCIATION, INC.**

- Q. Please state your name and address.
- A. My name is Steven C. Glenn and my home address is 319 Scenic Point Lane, Orange Park, Florida 32067, which is in the Point Condominiums ("Point"), and my business address is One Sun Life Executive Park, Wellesley Hills, Massachusetts, 02181.
- Q. Are you familiar with the area ("Requested Area") sought by Point Water & Sewer, Inc. ("PWS"), in its request for an original certificate to the Florida Public Service Commission ("Commission")?
- A. Yes. The Requested Area is approximately 4½ acres between U.S. 17 and the St. Johns River, south of Doctor's Inlet. The Requested Area includes the Point and Whitney's Marine ("Whitney"). The Point is a PUD of 34 townhouse units. At this time, only 19 units have been constructed. Whitney is a full service marine adjacent to the Townhouse property. It

1 | currently has approximately 75 wet slips and a limited
2 | amount of dry storage. Whitney plans to increase its
3 | wet slip and customer capacity by 50% in the near
4 | future. I have been a resident of the Point since
5 | December 15, 1983, and I am a member of the homeowners
6 | association for the Point, known as the Point Property
7 | Owners Association ("Association").

8 | Q. Do you hold any office with the Association?

9 | A. Yes. I am its President and have served in this
10 | capacity six of the thirteen years I have resided at
11 | the Point.

12 | Q. I show you a document labeled SCG-1. Can you identify
13 | it?

14 | A. Yes. It is the April 24, 1997 Staff Recommendation
15 | ("SARC Staff Recommendation") in the PWS Staff Assisted
16 | Rate Case ("PWS SARC").

17 | Q. The Application for Certification has been filed on
18 | behalf of PWS. Is this the original utility which
19 | provided water and wastewater service to the requested
20 | area?

21 | A. That depends.

22 | Q. Please explain.

23 | A. As the developer of the Point, Jim Yonge ("JEY")
24 | constructed the Point water treatment plant ("WTP") and
25 | wastewater treatment plant ("WWTP") in order to build

1 townhouse units and sell them for a profit. Although
2 the Commission has had jurisdiction over Clay County
3 since 1967, the utility is not certificated. As
4 discussed in the SARC Staff Recommendation, originally,
5 the utility was jointly owned by six different
6 corporations, NOH, Inc., IGR, Inc., NGF, Inc., NLM,
7 Inc., CNK, Inc., and QNK, Inc. JEY was the primary
8 shareholder in all of these corporations. These
9 corporations were merged into IGR, Inc. ("IGR"). In a
10 related party transaction, IGR entered into a security
11 agreement in the amount of \$100,000 for sale of the
12 utility to PWS. John Yonge and Patrick Carr are equal
13 company owners of PWS.

14 Additionally, as an attorney and developer, JEY stated
15 in Section 3, Article XIII of the Amended and Restated
16 Declaration of Covenants, Conditions, Restrictions and
17 Provision for Party Wall of The Point. "The Declarant,
18 its successors and assigns, shall operate the water and
19 sewer system in accordance with applicable laws, rules
20 and regulations of all governmental bodies having
21 jurisdiction thereof."

22 Furthermore, as an attorney and developer, JEY/NOH
23 entered into a sales contract in which he attempted to
24 transfer his ownership interest in the WTP and WWTP to
25 Tom Ryan of Envirosystems, JEY's certified operator.

1 The sales price was \$556.63. Tom Ryan refused to
2 consummate the deal when he discovered that the dock
3 carrying the sewer outfall line had not been properly
4 permitted by the Department of Natural Resources. This
5 1987 attempt to sell the water and wastewater plant was
6 the reason that the Association agreed to the Amended
7 Declaration mentioned on page 3 of the SARC
8 Recommendation. At Tom Ryan's request in 1988, the
9 Association agreed to pay all invoices directly to the
10 certified operator. Mr. Ryan requested this due to
11 JEY's long record of late payments. The Association's
12 expenses averaged \$750-\$800 per month from 1988 through
13 1995. During the early 1990's, the Yonge's "pretended"
14 that the Association owned the water and wastewater
15 treatment plants, and was responsible for its
16 operation. JEY told the U.S. Environmental Protection
17 Agency ("EPA") that the Association owned the plants.
18 In fact, he sent them a deed of transfer. His wife,
19 Vanda, wrote to the Florida Department of Environmental
20 Protection ("FDEP") claiming "the Association purchased
21 the plant from JEY. To preclude future
22 misinterpretation of the Association's role of paying
23 the utility's expenses, the Association notified JEY in
24 a letter dated December 22, 1995, that it would no
25 longer accept invoices for utility expenses. The

1 letter also stated that all correspondence should be
2 directed to JEY and that the Association should be
3 charged monthly in accordance with the Amended
4 Declaration.

5 Q. I show you a document labeled SCG-2. Can you identify
6 it?

7 A. Yes. It is a letter and the proposed purchase and sale
8 agreement offered to Mr. Ryan. Please note that the
9 purchase price is \$556.63, as shown on the letter.

10 Q. I show you a document labeled SCG-3. Can you identify
11 it?

12 A. Yes. It is the note from Vanda Yonge to the FDEP which
13 I just mentioned.

14 Q. You mentioned two transfers of the utility facilities
15 or majority organizational control and a proposed
16 transfer to the previous operator. Did the owners of
17 the utility ever file for either an original
18 certificate or approval from the Commission for
19 transfer of certificate, utility facilities, or
20 majority organizational control?

21 A. No. The six corporations did not file for an original
22 certificate nor did they seek Commission approval of
23 the transfer of majority organizational control to IGR.
24 IGR did not file an application for the approval of the
25 proposed transfer to Mr. Ryan. Although the

1 Association paid the invoices including the operator's
2 invoices during its period of oversight, it did not own
3 the system. Finally, when IGR allegedly transferred the
4 system to PWS, no applications were filed with the
5 Florida Public Service Commission for either an
6 original certificate or approval of the transfer.

7 Q. Please describe the relationship between IGR and PWS?

8 A. PWS is owned by John Yonge and Pat Carr. IGR is owned
9 by Jim Yonge. Jim Yonge is the father of John Yonge
10 and the father-in-law of Pat Carr. Pat Carr is married
11 to Karen Carr, Jim Yonge's daughter. Karen Yonge Carr
12 was the President of NOH, Inc., the permit holder of
13 the WTP and WWTP.

14 Q. Please describe the relationship between the utility
15 and customers of the utility?

16 A. In 1993, the EPA assessed a \$25,000 fine against the
17 utility for failure to comply with FDEP permit
18 requirement to install a dechlorinator on the WWTP.
19 JEY advised the EPA that the Association was
20 responsible party because it was the operator of the
21 utility. The Association contended that its only
22 responsibility was to pay the expenses of the utility.
23 In 1994, the EPA rescinded its fine against the
24 Association and sought action against JEY as owner of
25 the utility for performance of requirement and payment

1 of the fine. In 1995, JEY filed suit in court against
2 the Association claiming that the Association was the
3 responsible party for the EPA fine. That case is still
4 pending in the court.

5 On March 1, 1995, JEY regained control of the facility
6 operations and billing. Seven months later, on
7 September 12, 1995, PWS became owner of the utility in
8 which James Yonge's son, John Yonge, is the president.
9 Not long after gaining ownership of the utility, PWS'
10 billed the Association \$21,000 for services rendered
11 between March and September 1995, to be considered past
12 due if not paid within 15 days. In response to the
13 utility's bill, the Association requested proof of PWS
14 authority to collect for Mr. James Yonge and complete
15 documentation supporting monthly rates of \$3,000 for
16 water and wastewater. The Association, believing that
17 the utility's new rate was excessive, refused to make
18 payments. However, in acknowledgment that the utility
19 was entitled to compensation for services provided, the
20 Association established an escrow account and paid \$750
21 each month into the account. In an effort to resolve
22 the disagreement between the two parties and prevent
23 termination of water and wastewater services, the
24 Association contacted the FDEP and requested
25 assistance. The FDEP, upon discovery that this utility

1 | was subject to Commission jurisdiction, notified the
2 | Commission staff of the jurisdictional authority. The
3 | utility also was notified that since it was not
4 | authorized to charge rates, it could not terminate
5 | services to the Association for non-payment. The
6 | utility filed an application for exemption on July 21,
7 | 1996. Since the utility's plant capacity exceeded the
8 | minimum capacity for an exempt utility, PWS did not
9 | qualify for an exemption. The utility was then ordered
10 | to submit an application for an original certificate.
11 | On October 1, 1996, the utility filed a complaint
12 | against the Association in Circuit Court, to recover
13 | amounts charged in accordance with the Amended
14 | Declaration for water and wastewater services provided.
15 | The Association filed a motion for a temporary
16 | injunction on October 11, 1996, and filed its answer to
17 | the complaint on October 30, 1996. On November 8,
18 | 1996, the Court issued a temporary injunction in which
19 | the utility was ordered to continue water and
20 | wastewater services to the Association and also ordered
21 | the Association to pay to the utility \$32,921.86 within
22 | 30 days of the order, for services rendered from March
23 | 1995 through October 1996. On November 19, 1996, the
24 | Association filed a motion for clarification of, or
25 | amendment to, the temporary injunction. On December 6,

1 1996, an Agreed Order on the Association's motion was
2 issued. That Order directed the Association to pay 83%
3 of actual costs to the utility for: a service
4 technician; chemicals; tests; maintenance; taxes;
5 regulatory expenses and necessary insurance premiums
6 until further Order of the Court. These costs were to
7 be paid by the Association within twenty days of
8 receipt of the invoice from the utility. In
9 conjunction with the clarification, the Court reduced
10 the \$32,921.86 for unpaid costs from March 1995 through
11 October 1996, to \$23,770.03. Included in the Order,
12 the court stated, '...Nothing herein shall be
13 interpreted to infringe upon the jurisdiction of the
14 Public Service Commission to set utility rates in this
15 State. Furthermore, nothing herein shall be deemed an
16 admission by either party as to: (a) the reasonableness
17 of the charges, amounts or percentage set forth above;
18 (b) what items should be considered reasonable business
19 expenses; or (c) the rates that should be imposed by
20 the PSC.' In accordance with the Court Order, the
21 utility has apparently invoiced the customers for 83%
22 of expenses and the Association has remitted payment.
23 However, on February 12, 1997, the Association
24 transmitted to staff a facsimile of two invoices from
25 the utility in the amounts of \$1,510.60 for a FDEP

1 permit and \$11,264.14 for an insurance policy with
2 payment due 20 days after receipt. Upon notice of the
3 invoice sent to the customers and discussions with the
4 utility and the Association, staff determined that the
5 expedition of the SARC would be in the best interest of
6 all parties involved. Consequently, the customer
7 meeting was rescheduled from its original date, of May
8 14, 1997, to March 27, 1997, and staff's recommendation
9 filing date has been revised to reflect a May 6, 1997
10 agenda. Since the Circuit Court had before it issues
11 within the Commission's exclusive jurisdiction, the
12 Commission filed, with the Circuit Court, a Petition
13 for Leave to Intervene and Petition to Transfer the
14 Proceeding to the Florida Public Service Commission on
15 February 28, 1997. One day prior to the filing,
16 counsel for the Association filed with the Circuit
17 Court, a Motion to Abate or Transfer the Proceeding to
18 the Commission. The Court has scheduled a hearing on
19 the petition to intervene and transfer for April 29,
20 1997, in Clay County. Additionally, attorney/PWS owner
21 Pat Carr, made the following statement at the April,
22 1996, the Association Annual meeting "Jim Yonge owns
23 the plant, he can charge whatever the traffic will
24 bear". Due to JEY's overcharges from 1981-1987
25 (\$16,000) and PWS' threats and lawsuits, the residents

1 of the Point do not trust the Yonge's or their shell
2 corporations.

3 Q. Does the Association or the residents see PWS as a
4 different entity from the former owners.

5 A. No. Since 1983, we have dealt with Phil Yonge, Jim
6 Yonge, Karen Yonge Carr, Margie Yonge, John Yonge, and
7 Pat Carr. We have been faced with PDY, Inc., NOH,
8 Inc., IGR, Inc., and now, PWS, Inc. In our opinion,
9 the ownership of the "children's" corporation is
10 attributed to the father. In short, Jim Yonge is
11 operating PWS through his son and son-in-law.

12 Q. Does the Association or the residents want PWS to be
13 granted certification to serve the requested area?

14 A. No. We have been informed of the following by the Clay
15 County Utility Authority ("Authority"): (1) their lines
16 are within 500 feet of our property line; (2) they are
17 ready, willing and able to serve the residents of The
18 Point, (3) their "Central System" is more efficient
19 than a package plant, (4) the quality of their services
20 is better than a 17 year old package plant, and (5) the
21 Clay County Comprehensive Plan requires all package
22 plants to connect to the Central System, if the Central
23 System is within 1/4 mile. Conversely, we have learned
24 the following about NOH, IGR, and PWS: (1) the rates
25 for service will be well over \$140 per month per

1 unit, (2) the effluent from this 17 year old package
2 plant will be discharged within 250 feet from the
3 shore, and (3) the owners of PWS will use heavy-handed
4 tactics to collect their rates. Obviously, the
5 residents of the Point want the Authority to provide
6 our water and wastewater service.

7 Q. What does the Association want the Commission to do in
8 the docket?

9 A. The Association and its members (except, presumably,
10 the Carrs and the Yonge's) want the Commission to deny
11 PWS's application for certification and to order PWS to
12 connect to the Authority's system.

13 Q. Are there any complaints about the quality of service
14 from PWS?

15 A. Yes. The primary complaints are of two general types:
16 (1) the water has a "bad" smell early in the morning;
17 and (2) there is frequently too much chlorine in the
18 water. This appears to cause excess bleaching of
19 clothing and dry, irritated skin after showering. Also,
20 the WWTP is less than 30 feet from the kitchen window
21 of Frank and Sharon Kasper, two Point residents. They
22 have frequently complained about the excessive noise,
23 stench, and unsightliness of the WWTP. Furthermore,
24 the WWTP is discharging its effluent directly into the
25

1 swimming area for the Point's residents, including
2 children.

3 Q. Have you investigated whether the Point Water Plant can
4 provide fireflow service to the requested area?

5 A. I have investigated the plant's ability to provide
6 fireflow services. First, there are no fire hydrants in
7 the Requested Area. Second, I have spoken with Ted
8 Davis, an engineer with the Florida Public Service
9 Commission and was advised that the Point water system
10 can not provide fire protection although it is a county
11 requirement. Third, I have spoken with the County Fire
12 Marshall's Office and was told that the system can not
13 provide fireflow protection in violation of county
14 requirements.

15 Q. PWS has alleged that it has the financial ability to
16 provide water and wastewater service in the Requested
17 Area. Do you agree with that?

18 A. No. Looking at the SARC Staff Recommendation, it
19 indicates that PWS has a note payable in the amount of
20 \$100,000 whereas its plant investment is only the cost
21 of a prorated meter (which has not been invested yet)
22 and working capital. In addition, as of May 1, 1997,
23 Pat Carr had been repeatedly delinquent in his payments
24 of homeowner's assessment fees to the Association. I
25 have also reviewed Mark J. Easterling's testimony and

1 exhibits, and conclusions. I agree with Mr.
2 Easterling's testimony -PWS does not have the financial
3 ability to provide water and wastewater service in the
4 Requested Area.

5 Q. Is it in the public interest for the Commission to
6 grant the certification to PWS?

7 A. No. For the above stated reasons and others, it is not
8 in the public interest for the Commission to grant a
9 certificate to PWS. As set forth in Chapter 94-491,
10 Laws of Florida, Section 1, states as follows: "It is
11 declared as a matter of legislative determination that
12 the extensive growth of population and attendant
13 commerce throughout Clay County has given rise to
14 public health and water supply concerns, in that many
15 of the unincorporated areas of Clay County are not
16 served by water and sewer facilities normally and
17 generally provided and maintained by governmental
18 agencies and instead are served by private wells and
19 privately owned package sewage treatment plants or
20 septic tanks. The proliferation of such package and
21 sewage treatment plants and use of septic tanks poses
22 a significant risk of contamination of water supply
23 sources for both incorporated and unincorporated areas
24 of Clay County. It is the intent of the Legislature to
25 create an independent special authority in Clay County

1 with overall responsibility for the provision of water
2 and sewer services in certain areas of Clay County and
3 certain portions of Duval County, lying within the City
4 of Jacksonville, a municipal corporation, as
5 hereinafter provided, and will provided economies of
6 scale and may eliminate duplicative staff functions and
7 positions, thereby eliminating duplicative costs in the
8 operation of said system." It would be in the public
9 interest for the Authority to provide service to the
10 residents of the Point and Whitney.

11 The Commission should order PWS to connect to the
12 Authority's system. There would be no loss of
13 investment to PWS in plant - the Staff has already
14 found that PWS has no rate base except for prorated
15 meter (which has not been installed) and working
16 capital. Additionally, the granting of a Certificate
17 of Authority to the Yonge family would validate their
18 reprehensible behavior, and tarnish the image of the
19 Commission.

20 Q. Does this complete your testimony?

21 A. Yes, but I will answer any other questions.
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23
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25