

MEMORANDUM

JULY 21, 1997

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JUL 21 1997
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FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CAPELESS) *MSC*
RE: DOCKET NO. 961321-WS - APPLICATION FOR CERTIFICATES TO
PROVIDE WATER AND WASTEWATER SERVICE IN CLAY COUNTY BY
POINT WATER AND SEWER, INC. *0868-PAD*

Attached is a PREHEARING ORDER to be issued in the above
referenced docket. (Number of pages in Order - 21)

MUST GO TODAY

RGC:mw

Attachment

cc: Division of Water & Wastewater (Brady, Redemann)

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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
ORDER NO. PSC-97-0868-PHO-WS
ISSUED: July 21, 1997

Pursuant to Notice, a Prehearing Conference was held on July 8, 1997, in Tallahassee, Florida, before Commissioner Joe Garcia, as Prehearing Officer.

APPEARANCES:

Douglas H. Reynolds, Esquire, Cox & Reynolds, 4875 N. Federal Highway, Tenth Floor, Fort Lauderdale, Florida 33308.

On behalf of Point Water & Sewer, Inc.

Scott G. Schildberg, Esquire, Martin, Ade, Birchfield & Mickler, P.A., 3000 Independent Square, Jacksonville, Florida, 32202.

On behalf of the Point Property Owners Association, Inc.

Rosanne G. Capeless, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

Point Water and Sewer, Inc. (PWS or utility) is a Class C utility providing service in Clay County. The utility was constructed in 1980 to provide water and wastewater service to the Point Town Home Community known as "The Point", which consists of 19 developed units. Since its construction, service has been expanded to include one other customer, The Whitney Marina (the Marina), located next door to the plant. Although the Public Service Commission (Commission) has had jurisdiction over the water and wastewater facilities in Clay County since 1967 pursuant to Section 367.171, Florida Statutes, and the utility has been in existence since 1980, the utility is not certificated.

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ORDER NO. PSC-97-0868-PHO-WS
DOCKET NO. 961321-WS
PAGE 2

The Commission was made aware of the utility's existence in December of 1995, by the Department of Environmental Protection (DEP). Commission staff (staff) contacted the utility and advised it of the Commission's jurisdiction. The utility then filed an application for a small system exemption pursuant to Section 367.022, Florida Statutes, on July 21, 1996. However, upon review, the utility's capacity exceeded the maximum allowed for a small system exemption. On November 4, 1996, PWS submitted an application for an original water and wastewater certificate in this docket. On November 19, 1996, the Point Property Owners Association (PPOA) timely filed an objection to the notice of application.

On December 2, 1996, PWS filed for a staff assisted rate case and requested emergency rate relief but later withdrew the request for emergency rates. The rate proceeding was processed in Docket No. 961434-WS. By Proposed Agency Action Order No. PSC-97-0588-FOF-WS, issued May 23, 1997, in Docket No. 961434-WS, the Commission approved rates and charges for the utility, and addressed other issues related to the rate proceeding. No protests were filed to the order, and the order became final on June 14, 1997.

Originally, the utility was jointly owned by six different corporations, NOH, Inc., IGR, Inc., NGF, Inc., NLM, Inc., CNK, Inc., and QNK, Inc. These corporations were merged into IGR, Inc. On September 7, 1995, IGR, Inc. entered into a security agreement in the amount of \$100,000 for sale of the utility to PWS. John Yonge and Patrick Carr are equal company owners of PWS.

Several disputes and legal actions have occurred between the customers and the utility or its predecessor, IGR, Inc. The disputes have centered around the amounts charged for operating the system, the responsibility for operating the system, and liability for a fine imposed by the Environmental Protection Agency (EPA). IGR, Inc. and James Yonge filed a lawsuit against PPOA, alleging that the association is the party responsible for the EPA fine. In another pending proceeding, PWS filed a lawsuit to collect amounts charged PPOA for utility operations, pursuant to the declaration of covenants and quantum meruit.

Since the Circuit Court in the latter action had before it issues within the Commission's jurisdiction, on February 28, 1997, the Commission filed, in the Circuit Court, a Petition for Leave to

Intervene and Petition to Transfer the Proceeding to the Commission. One day prior to the filing, the PPOA filed, in the Circuit Court, a Motion to Abate or Transfer the Proceeding to the Commission. Both pleadings were heard by the Court on April 29, 1997, in Clay County. At the hearing, the Court determined that the Commission would have jurisdiction once it set rates on an ongoing basis for the utility. A court order is currently pending on the matter. As noted above, the Commission approved rates and charges for the utility by Order No. PSC-97-0588-FOF-WS, issued May 23, 1997.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7)

days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

III. POST-HEARING PROCEDURES

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's

position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
John Yonge	PWS	1-5, 7, 11, 16, 17
James Lucas	PWS	2, 3, 11, 16, 17
Phillip Disque	PWS	1, 3, 11, 16, 17
Lori Easterling*	PWS	1, 2
Frank Kasper*	PWS	1, 2
Mark J. Easterling	PPOA	1, 5, 6, 11, 15, 17
Steven C. Glenn	PPOA	1, 2, 5, 6, 11, 15-17
Roy R. Lewis	PPOA	11, 17
Carol Matthews	PPOA	11, 17
Kristen Smeltzer	PPOA	5, 11, 17
Lynal DeFalco	Staff	2
Susan L. Fraser	Staff	7
Ray O. Avery	Staff	5
<u>Rebuttal</u>		
John Yonge	PWS	1-5, 7, 11, 16, 17
James E. Yonge	PWS	1, 3, 4, 11, 16, 17
Edward McCormack	PWS	2, 3, 11, 16, 17
Candis Whitney	PWS	3, 11, 16, 17
Gary Howalt	PWS	3, 11, 16, 17
Phillip Disque	PWS	3, 11, 16, 17

*PWS intends to call Ms. Easterling and Mr. Kasper as adverse witnesses, to depose them, and to file their deposition transcripts in the docket in lieu of testimony.

VI. BASIC POSITIONS

PWS: The application of PWS for original certificates to provide water and wastewater service in Clay County meets the filing requirements of the Commission. PWS, and/or its predecessor, have provided the subject service successfully for the past twenty-six (26) months at the specific request of the customers. No other utility has opposed this application or sought to provide the same service. PWS has the technical and financial ability to provide the proposed service, there is a need for the residential and commercial service, and the service is not presently available from any other source. The granting of the certificates is in the best interest of the public. Therefore, the Commission should grant PWS' application for certificates to provide water and wastewater service in the proposed territory.

PPOA: The Commission should deny PWS's application for a certificate to serve the requested area. PWS has not met its burden of proof to be granted a certificate. Furthermore, it is not in the public interest for the Commission to grant PWS's application and allow PWS to serve the requested area. Connection of the package treatment plants, like the Point Plant, to regional systems will be required in the future. Such a connection can be accomplished now by denying PWS's application, requiring PWS to connect to CCUA's system, and requiring PWS to transfer its utility facilities to CCUA. PWS has almost no investment in the system except pro forma plant (*i.e.*, plant which has not been invested yet), working capital, and its projected costs of this certification. PWS does not have the financial ability to pay its debts. PWS does not have the financial ability to own and operate the utility system. PWS and the customers are in a very adversarial relationship, with both sides suing each other. The rates charged by PWS are staggeringly high, especially when a regional utility with normal rates and charges is 150 feet away. It is in the public interest for CCUA, and not PWS, to serve the requested area.

STAFF: The information gathered through prefiled testimony indicates at this point that the utility appears to have the technical ability to continue to provide service to its existing territory as currently developed. A determination of whether the utility has the long term technical and financial ability to continue service, and whether granting water and wastewater certificates of authorization to PWS would be in the public interest cannot be made until the evidence presented at hearing is fully analyzed. Non-testifying staff's positions are preliminary, are based upon materials filed by the utility and the objector, and are intended to inform the parties of staff's preliminary positions. Staff's final positions will be based upon an analysis of the evidence presented at the hearing.

VII. ISSUES AND POSITIONS

ISSUE 1: Does PWS have the financial ability to continue to serve the existing service area, pursuant to Rule 25-30.034(1)(d), Florida Administrative Code?

POSITIONS

PWS: Yes.

PPOA: No.

STAFF: No position pending further development of the record.

ISSUE 2: Does PWS have the technical ability to continue to serve the existing service area, pursuant to Rule 25-30.034(1)(d), Florida Administrative Code?

POSITIONS

PWS: Yes.

PPOA: No. The utility does not provide an adequate level of fire flow.

STAFF: According to staff witness DeFalco, PWS appears to have the technical ability to serve the existing territory as currently developed. No position pending further development of the record with respect to long term technical ability.

ISSUE 3: Has PWS met all requirements for original certificates set forth in Section 367.045, Florida Statutes, and Rule 25-30.034, Florida Administrative Code?

POSITIONS

PWS: Yes.

PPOA: No. PWS has not met its burden of proof with respect to the requirements of Section 367.045(1), Florida Statutes, and Rules 25-30.030 and 25-30.034, Florida Administrative Code.

STAFF: The utility has provided information required by the rules and statutes, with the exception of Rules 25-30.034(1)(h) and (I), Florida Administrative Code, concerning territory descriptions and maps.

ISSUE 4: Is the service proposed by the applicant needed?

POSITIONS

PWS: Yes.

PPOA: No. Service to the area is available and should be provided by Clay County Utility Authority.

STAFF: No position pending further development of the record.

ISSUE 5: Does service exist from other sources within geographical proximity to serve the area that PWS is requesting to serve?

POSITIONS

PWS: No, the service proposed to be provided by the applicant is not available from any other source.

PPOA: Yes, water and wastewater service is available from another utility.

STAFF: According to witness Avery, the Clay County Utility Authority (CCUA) has extended its service lines to within one quarter mile of the Point condominiums. Extension of the county's water and sewer service would require lines, by jack and bore, under U.S. Highway 17 at a CCUA-estimated total cost in excess of \$200,000. Non-testifying staff has no position concerning the cost effectiveness of such interconnection pending further development of the record.

ISSUE 6: Can the public in the requested area be adequately served by modifying or extending the current system of Clay County Utility Authority (CCUA)?

POSITIONS

PWS: This is not an issue in this proceeding.

PPOA: Yes.

STAFF: The Commission does not regulate the CCUA. Staff has no further position pending further development of the record regarding adequate service by CCUA.

ISSUE 7: Is the continued provision of service by PWS consistent with the adopted Clay County Comprehensive Plan?

POSITIONS

PWS: The granting of the original certificates will not be inconsistent with the Clay County Comprehensive Plan. See letter of Susan Fraser dated March 25, 1997 and attached to her Direct Testimony as Exhibit SLF-1. In addition, no timely objection was made based upon the Comprehensive Plan.

PPOA: No. The Clay County Comprehensive Plan requires such small plants to connect to regional systems when the regional system is within a quarter-mile.

STAFF: Pursuant to Section 367.045(5)(b), Florida Statutes, the Commission need not consider whether the issuance of a certificate is inconsistent with the local comprehensive plan unless a timely objection has been made based on the comprehensive plan. Since no such timely objection was made in this case regarding the comprehensive plan, the Commission is neither bound by the comprehensive plan nor required to consider it. However, if the Commission does choose to consider the comprehensive plan, it should be noted that witness Fraser has indicated that the county weighs the cost of the extension in its determination of availability of service. Witness Fraser has also testified that continued provision of service by PWS is not inconsistent with the comprehensive plan, but that the county will not support a mandatory connection in this case due to the cost for extension and the satisfactory performance of the existing plant.

ISSUE 8: Should the utility be required to pay regulatory assessment fees for 1996 and any applicable penalties and interest?

POSITIONS

PWS: Yes, the utility will pay the 1996 regulatory assessment fees, if not already paid.

PPOA: Yes. Agree with staff.

STAFF: Yes, the utility should be required to remit regulatory assessment fees for 1996 and any applicable penalties and interest within 45 days of the final order in this matter.

ISSUE 9: Stipulation.

ISSUE 10: Stipulation.

ISSUE 11: Is it in the public interest for the Commission to grant PWS certificates of authorization to continue providing service to the existing service area?

POSITIONS

PWS: Yes. The service proposed by the applicant does not involve any potential material harm to the environment.

PPOA: No.

STAFF: The public interest consideration is dependent upon the resolution of all issues outlined above and on a combination of factors such as the operations history of the plant, long term effectiveness of continued plant operations, compliance with rule criteria, and the feasibility of other service options. Staff's final position on this issue cannot be determined until the evidence presented at the hearing is fully analyzed.

ISSUE 12: Dropped.

ISSUE 13: Dropped.

ISSUE 14: Dropped.

ISSUE 15: Should the Commission require PWS to refund the funds it has collected from its customers?

POSITIONS

PWS: No.

PPOA: Yes. If the Commission does not grant PWS a certificate, then PWS never had authority under Chapter 367, Florida Statutes, to operate a utility.

STAFF: No refunds are appropriate for rates approved in the staff-assisted rate case and charged by PWS pursuant to Order No. PSC-97-0588-FOF-WS. As to any funds collected prior to that date, staff has no position pending further development of the record.

LEGAL ISSUES

ISSUE 16: Should PWS be fined for operating a water and wastewater utility without a certificate, in violation of Section 367.031, Florida Statutes, and for failing to obtain Commission approval prior to the transfers of the utility, in violation of Section 367.071, Florida Statutes?

POSITIONS

PWS: No.

PPOA: Yes.

STAFF: Section 367.031, Florida Statutes, requires all utilities subject to the Commission's jurisdiction to obtain, from the Commission, a certificate of authorization to provide water or wastewater service. Section 367.071 provides that a utility may not transfer its certificate, facilities or any portion thereof, or majority organizational control without Commission approval. Staff has no position at this time regarding whether the utility should be fined for these violations, pending further development of the record.

ISSUE 17: Should the Commission require PWS to connect to CCUA's system and transfer its utility system to CCUA?

POSITIONS

PWS: No.

PPOA: Yes. The utility system serving the requested area should be connected to a regional system when it is available and CCUA's system is available. In the event that the Commission grants PWS a certificate, it should still require PWS to connect to CCUA's system and to convert into a reseller.

STAFF: Since the PWS treatment plants are meeting all current state environmental standards, a mandatory connection does not appear to be necessary at this time.

VIII. **EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
James Lucas	PWS	_____ (Exhibit A)	Resume
James Lucas	PWS	_____ (Exhibit B)	Operation and Maintenance Report - Point Wastewater Facility
James Lucas	PWS	_____ (Exhibit C)	Capacity Analysis Report Point Town- homes
Mark J. Easterling	PPOA	_____ (MJE-1)	Letter and Maps from Authority
Mark J. Easterling	PPOA	_____ (MJE-2)	Clay Comprehen- sive Plan Excerpts
Mark J. Easterling	PPOA	_____ (MJE-3)	Map of Small Water Plants

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Mark J. Easterling	PPOA	_____ (MJE-4)	Map of Small Wastewater Plants
Mark J. Easterling	PPOA	_____ (MJE-5)	Map of Urban Service Areas
Mark J. Easterling	PPOA	_____ (MJE-6)	Map of Centralized Service Areas
Mark J. Easterling	PPOA	_____ (MJE-7)	Map of Regional Water Plants
Mark J. Easterling	PPOA	_____ (MJE-8)	Map of Regional Wastewater Plants
Mark J. Easterling	PPOA	_____ (MJE-9)	Authority Resolution No. 96/97-01
Mark J. Easterling	PPOA	_____ (MJE-10)	SARC Staff Recommendation
Mark J. Easterling	PPOA	_____ (MJE-11)	Rate Comparison of PWS and Authority
Mark J. Easterling	PPOA	_____ (MJE-12)	April 29, 1997 Letter from Kemp
Mark J. Easterling	PPOA	_____ (MJE-13)	Impact of Investment on Revenues
Steven C. Glenn	PPOA	_____ (SCG-1)	SARC Staff Recommendation
Steven C. Glenn	PPOA	_____ (SCG-2)	Letter and Proposed Sale Agreement
Steven C. Glenn	PPOA	_____ (SCG-3)	Vanda Yonge Note
Roy R. Lewis III	PPOA	_____ (RRL-1)	Resume
Lynal DeFalco	Staff	_____ (LDF-1)	DEP construction permit for the water facility

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Lynal DeFalco	Staff	_____ (LDF-2)	Deficiency letter regarding the DEP Sanitary Survey Report and return receipt
Lynal DeFalco	Staff	_____ (LDF-3)	DEP Sanitary Survey Report and cover letter
Susan L. Fraser	Staff	_____ (SLF-1)	Letter from Susan L. Fraser to Mark Easterling regarding the Clay County Comprehensive Plan
Susan L. Fraser	Staff	_____ (SLF-2)	Minutes from the April 8, 1997 Clay County Board of Commissioners meeting
Ray O. Avery	Staff	_____ (ROA-1)	Clay County Utility Authority's ERC calculation for the Point Condominiums and Whitney's Marina
Ray O. Avery	Staff	_____ (ROA-2)	Conceptual map of water and sewer line extensions to the Point Condominiums
Ray O. Avery	Staff	_____ (ROA-3)	Chart of the costs of connection and service to the Point and Whitney's Marina by Clay County Utility Authority

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ray O. Avery	Staff	_____ (ROA-4)	Clay County Utility Authority's tariffs
Ray O. Avery	Staff	_____ (ROA-5)	Application for Clay County Utility service by the Point Property Owners Association

Rebuttal

John Yonge	PWS	_____ (JY-1)	Counsel's letter dated December 13, 1996
John Yonge	PWS	_____ (JY-2)	Excerpt of Lori Easterling's Deposition
John Yonge	PWS	_____ (JY-3)	DEP's letter dated April 1, 1997
John Yonge	PWS	_____ (JY-4)	Draft DEP Permit
John Yonge	PWS	_____ (JY-4A)	Notice of DEP Permit Issuance dated May 23, 1997
John Yonge	PWS	_____ (JY-5)	October 14, 1996 Affidavit of Steve Glenn
John Yonge	PWS	_____ (JY-6)	DEP's Conclusions
John Yonge	PWS	_____ (JY-7)	PWS's Original Application for an Original Certificate and Exhibits
John Yonge	PWS	_____ (JY-8)	Ms. Brady's letter dated December 5, 1996

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John Yonge	PWS	_____ (JY-9)	PWS's written response to Ms. Brady's letter dated January 28, 1997 and exhibits
James E. Yonge	PWS	_____ (JEY-1)	Letter from Lorie A. Easterling to Charles G. Houriet, dated November 3, 1992
James E. Yonge	PWS	_____ (JEY-2)	Letter from PPOA's attorney, J. Michael Lindell to James E. Yonge, dated December 22, 1994
James E. Yonge	PWS	_____ (JEY-3)	Financial Assistance Agreement
Gary K. Howalt	PWS	_____ (GKH-1)	Resume
Gary K. Howalt	PWS	_____ (GKH-2)	Whitney's Marine Clay County, Florida, Surface Water Quality Results of October 16, 1996 Sampling Event - report dated October 28, 1996

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Candis Whitney	PWS	_____ (CW-1)	Whitney's Marine Clay County, Florida, Surface Water Quality Results of October 16, 1996 Sampling Event - report dated October 28, 1996

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

1. The parties agree to request that the Commission take official recognition of Order No. PSC-97-0588-FOF-WS, issued May 23, 1997, in Docket No. 961434-WS, related to the utility's staff-assisted rate proceeding.
2. PWS and its related predecessors did not obtain water and wastewater certificates from the Commission prior to providing service. (Issue 9)
3. PWS and its related predecessors did not obtain Commission approval of their transfers of utility assets or majority organizational control. (Issue 10)

X. PENDING MOTIONS

1. Staff's Objection to PWS's First Set of Interrogatories and Requests for Production and Request for a Protective Order, filed June 30, 1997, was pending at the time of the prehearing conference. On July 16, 1997, PWS filed its response to staff's objection, indicating that it withdraws the discovery requests directed to staff. Therefore, no ruling on the matter is required.

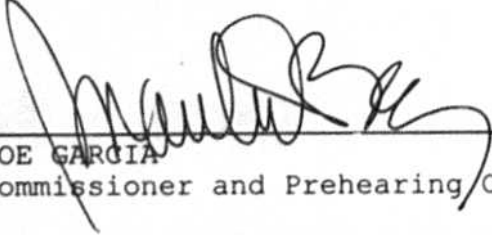
XI. RULINGS

1. At the prehearing conference, PWS's oral request to file the deposition testimony of two adverse witnesses, Ms. Lori Easterling and Mr. Frank Kasper, was granted. The deposition testimony shall be filed in lieu of direct testimony, by July 18, 1997. Any intervenor and/or staff testimony shall be filed by July 25, 1997.
2. At the prehearing conference, staff orally requested that the names of two staff members, Mr. Ted Davis and Ms. Hillary Kemp, be stricken from PWS's prehearing statement. Because PWS agreed not to call these staff members as witnesses, no ruling on the matter was required.

It is therefore,

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 21st day of July, 1997.



JOE GARCIA
Commissioner and Prehearing Officer

0457.10

(S E A L)

RGC

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.