

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

FILED: June 30, 1997

STAFF'S OBJECTION TO POINT WATER AND SEWER'S
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION
AND REQUEST FOR A PROTECTIVE ORDER

The Staff of the Florida Public Service Commission (Staff), pursuant to Rule 25-22.045(3), Florida Administrative Code, and Rules 1.280(c), 1.351(b) and (c), Florida Rules of Civil Procedure, by and through its undersigned attorney, hereby objects to the First Set of Interrogatories and Requests for Production served by Point Water and Sewer, Inc. (the utility or PWS) and requests that the Prehearing Officer issue a protective order relieving Staff from the undue burden and annoyance of responding to the interrogatories and requests for production. In support thereof, Staff states the following:

1. On November 4, 1997, PWS filed an application for certificate with the Public Service Commission. A timely objection to PWS's application was filed, and the matter has been set for hearing on August, 1, 1997, in Clay County, Florida. Pursuant to the Order Establishing Procedure, Order No. PSC-97-0245-PCO-WS, issued February 28, 1997, parties and Staff were permitted to file testimony. On May 19, 1997, Staff filed the testimony of three witnesses: Lynal DeFalco of the Department of Environmental Regulation, Ray Avery of the Clay County Utility Authority, and Susan Fraser, an employee of Clay County.

2. On June 20, 1997, PWS filed a first set of interrogatories and a first set of interrogatories, purporting to seek information from Commission staff related to the issues in this matter.

3. PWS's first set of interrogatories consists of nine questions. Interrogatory No. 1 states:

Please set forth any material fact or reason known to you to support the contention that PWS has the financial ability to own and operate the utility system. Interrogatories Nos. 2 through 8 make similar requests regarding other matters which have been

DOCUMENT NUMBER-DATE

06547 JUN 30 97

FPSC-RECORDS/REPORTING

5EC

identified as issues in this matter, such as the utility's technical ability, the availability of other service providers, and the public interest. Interrogatory No. 9 requests the identity of each person who has material and personal knowledge regarding this matter.

4. PWS's first request for production consists of 16 individual requests for material. Request for Production No. 1 seeks:

Any and all documents relating or pertaining to any contention that the Application for an Original Certificate by Point Water and Sewer, Inc., is not in compliance with the governing statute, Section 367.045, Florida Statutes, or any other pertinent statutes in the Administrative Rules concerning an application for an Original Certificate.

Requests Nos. 2 through 16 make similar inquiries regarding other matters at issue in the case, such as fire flow, quality of service, financial and technical ability, the public interest, and whether the Commission should show cause the utility for alleged statutory violations.

5. Staff objects to these discovery requests in that the discovery improperly seeks information and conclusions from Commission Staff on a pending matter, unnecessarily impinges upon the Commission Staff's role as an advisor the Commission, and seeks attorney work product.

6. According to Rule 25-22.026(3), Florida Administrative Code, Staff may participate as a party in a proceeding. Staff's primary duty is to "represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration." However, Staff is not a real party in interest in any proceeding before the Commission. South Florida Natural Gas Co. v. Public Service Commission, 534 So.2d 695 (Fla. 1988). One of Staff's primary functions is to provide legal and technical advice on matters pending before the Commission. Staff accomplishes this through the filing of recommendations and discussing these recommendations at Agenda conferences.

7. As noted above, Staff sponsored the testimony of three witnesses in order to bring relevant facts to the Commission's attention. The utility is not prevented from deposing those witnesses regarding their testimony. However, in this case, the

utility seeks information from the Commission staff regarding the ultimate facts at issue in this proceeding, and Staff's conclusions on those facts.

8. Staff's positions, if any, on the issues in this proceeding are set forth in Staff's prehearing statement. As noted in the prehearing statement, Staff's positions prior to the hearing are preliminary and intended to notify the parties.

9. PWS's discovery requests improperly impinge upon Staff's role in advising the Commission. The Commission uses its staff to "test the validity, credibility, and competence of the evidence presented." South Florida Natural Gas at 698. The discovery sought by PWS in its requests for production of documents and interrogatories essentially asks for Staff's workpapers, legal conclusions, and strategies, while in the course of the hearing process.

10. Moreover, the scope of the material sought would include attorney work product, in that it would include legal research and conclusions regarding the issues in this matter. For example, Request for Production of Documents No. 9 seeks documents which would support the conclusion that the Commission has the authority to require the utility to connect to the county system. Staff has made no such conclusion in its prehearing statement. Moreover, any documentation regarding the that matter would include legal research regarding the Commission's statutory authority.

11. The Commission has recognized Staff's advisory role, and has quashed the depositions of non-testifying members of Staff. See Order No. PSC-94-1562-PCO-WS, issued December 14, 1994, in Docket No. 950945-WS, and Order No. PSC-95-0137-PCO-SU, issued January 27, 1995, in Docket No. 940963-SU. Moreover, the Commission has specifically denied a utility's motion to compel Staff to respond to requests for admissions. In Docket No. 860960-WS, the Commission held that, given its role in the proceedings, Staff could not be compelled to respond to requests for admissions: "The Staff of this Commission is an independent, professional staff, empowered to act to fulfil the requirements of that role." Order No. 17910, issued July 27, 1987.

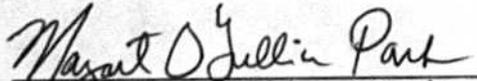
12. By this motion, Staff does not contend that the utility may not have access to documents in this proceeding. To the extent that the utility has not obtained all available documentation, the utility may file a public records request pursuant to Chapter 119, Florida Statutes, which does not seek attorney work product or request information regarding staff's position or conclusions. This will permit the utility to obtain documents available under

STAFF'S OBJECTION TO DISCOVERY
DOCKET NO. 961321-WS
PAGE 4

the Pubic Records law, without improperly disclosing Staff conclusions or attorney work product.

WHEREFORE, the Staff of the Florida Public Service Commission requests that the Prehearing Officer issue a protective order relieving Staff from the undue burden and annoyance of responding to the first set of interrogatories and first requests for production served on Staff by Point Water and Sewer, Inc.

Respectfully submitted, this
30th day of June, 1997.



Margaret O'Sullivan Parker
Staff Counsel

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

FILED: June 30, 1997

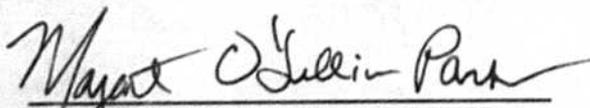
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of STAFF'S
OBJECTION TO POINT WATER AND SEWER'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION AND REQUEST FOR A PROTECTIVE ORDER,
has been furnished to the following by facsimile and U.S. Mail
this 30th day of June, 1997:

Douglas Reynolds, Esquire
Cox & Reynolds
4875 N. Federal Hwy., 10th Fl.
Fort Lauderdale, Fl 33308

J. Michael Linell, Esquire
Hayes & Linell, P.A.
233 E. Bay St., #620
Jacksonville, FL 32202

Scott G. Schildberg, Esquire
Martin, Ade, Birchfield &
Mickler, P.A.
Post Office Box 59
Jacksonville, FL 32201


MARGARET O'SULLIVAN PARKER

FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(904) 413-6199