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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
Date Submitted for
Filing: May 23, 1997

**ORIGINAL
FILE COPY**

**PREHEARING REBUTTAL TESTIMONY OF JAMES E. YONGE
ON BEHALF OF POINT WATER AND SEWER, INC.**

Q. Please state your name and address for the record.

A. My name is James E. Yonge.

Q. Are you familiar with the Point Townhomes?

A. Yes.

Q. How are you familiar with the Point Townhomes?

A. On or about 1980, my brother, Philip and I, through various corporate entities owned the real estate known as The Point and PDY, Inc. (owned by Philip) and developed the Point Townhomes. I presently own two townhomes at the development and IGR, Inc., a corporation of which I am President and own 15 undeveloped lots at the Point Townhomes.

Q. Are you familiar with the water and wastewater facility located at the Point Townhomes.

A. Yes. The facility was developed on or about 1980 for the purpose of providing water and wastewater service for the Point Townhomes. It also has provided service to Whitney's Marina, which is on the adjoining property.

1 Q Are you familiar with NOH, Inc.?

2 A. Yes. NOH, Inc. is a Florida corporation, which during the 1980's was the
3 permittee for the operation of the water and wastewater facilities located at the
4 Point Townhomes . On or about 1985, the Point Property Owners Association
5 (hereinafter referred to as the "PPOA"), took over the operation of the water and
6 wastewater facility. Subsequent thereto, the State of Florida DEP permit for the
7 water and wastewater facility was acquired by Frank Casper, who was the
8 secretary and treasurer of the PPOA.

9 Q. Why did the PPOA take over the operation of the water and wastewater facility?

10 A. During the mid-1980's the PPOA felt that they were paying "excessive" amounts
11 of money for the operation of the facility. They felt that by operating the facility
12 themselves that they could control costs, reduce expenses and control their own
13 destiny.

14 Q. What was your involvement with the facility during the period of 1985 through on
15 or about 1994?

16 A. I had no involvement with the facility during that period of time. On or about
17 1994, I was contacted by the EPA who indicated during 1991 and 1992 the
18 facility had been cited for violating federal environmental laws by discharging
19 effluent into the St. John's River, which allegedly had a excessive amount of
20 chlorine.

21 Q. Why did this occur?
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1 A. It occurred because the PPOA did not properly operate the Plant at the time and
2 allegedly elected not to install dechlorination equipment which had been
3 requested by the government.

4 Q. Were you responsible for installing the dechlorination equipment?

5 A. No. The PPOA had undertaken the responsibility of operating the Plant and had
6 indicated that they would be responsible for the payment of all expenses related to
7 the operation of the Plant. In fact, the PPOA subsequently did install and pay for
8 the dechlorination equipment. The PPOA has never asked me for reimbursement.

9 Q. Did the PPOA ever represent to anyone that they were responsible for the
10 operation of the subject facility?

11 A. Yes. In a letter dated November 3, 1992 written by Lori Easterling, in her
12 capacity as President of the PPOA, to the Domestic Waste Section of the
13 Department of Environmental Regulation, she indicated that, "Pursuant to an
14 agreement between the Point Property Owners Association, Karen Carr, Jim
15 Yonge and NOH, Inc., we are responsible for the operation of the above-
16 mentioned wastewater treatment plant." A true and correct copy of the November
17 3, 1992, letter is attached hereto as Exhibit "JEY-1". Further, the PPOA billed
18 Whitney's Marina for water and wastewater services during this period and
19 collected monies from Whitney's Marina for these services. None of these funds
20 were ever paid to me or my representatives or to NOH, Inc. And further, the
21 PPOA collected monies from the townhome owners and paid the expenses of
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1 operating the plant from these funds and the PPOA undertook the day-to-day
2 management of the plant through their agents and representatives.

3 Q. At any point did the PPOA request that you operate the Plant?

4 A. Yes. On December 22, 1994, the PPOA, through its attorney, wrote to me and
5 requested that I comply with my contractual obligation to provide water and
6 wastewater service to the PPOA. A true and correct copy of the December 22,
7 1994, letter is attached hereto as Exhibit "JEY-2" and incorporated herein by
8 reference. Because I did not have any prior notice that the PPOA was making this
9 demand upon me, it was necessary to have an additional period of time to
10 undertake the operation of the facility through NOH, Inc.'s successor, IGR, Inc.
11 IGR undertook the operation of the facility on or about March 1, 1995, and
12 continued to operate until on or September 7, 1995, when it transferred any and all
13 interest it had in the facility to PWS.

14 Q. Do you have any ownership interest in PWS?

15 A. No.

16 Q. Are you an officer or director of PWS?

17 A. No.

18 Q. Does IGR have any interest in PWS?

19 A. Yes, to the extent that IGR has a security interest in the assets of PWS as a result
20 of IGR selling its assets, rights and obligations to PWS for the sum of
21 \$100,000.00. IGR has not received any payments of principal or interest since
22 the sale. PWS has not been capable of making such payments because of the
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1 PPOA's refusal to pay for services. IGR will forbear as to the collection of
2 principal and interest to the extent necessary to allow PWS to financially operate
3 with a positive cash flow and to provide that it has the financial ability to operate
4 the facility. It should be noted that no substantial capital investment will be
5 required since the plant is already constructed and operating properly. In addition,
6 to the extent necessary, IGR will subordinate its security interest to allow PWS to
7 borrow against its assets. A true and correct copy of a Financial Assistance
8 Agreement is attached hereto as Exhibit "JEY-3".

9 Q. Why would IGR defer or forebear receipt of its monies due?

10 A. Because IGR, Inc. wants to protect its assets (the chattel mortgage receivable) and
11 therefore it would be beneficial to all concerned that PWS continue to operate and
12 be financially viable.

13 Q. Did NOH ever file for an original certificate of authorization from the Public
14 Service Commission (hereinafter referred to as the "PSC")?

15 A. No. NOH was under the impression that it was an exempt utility and it was not
16 required to file with the PSC, according to its engineer, Alan Potter. It is
17 interesting to note that although many different individuals and entities have been
18 involved with this plant over the past 17 years, no one had raised the issue of
19 certification by the PSC until the Summer of 1996 when it was raised by the DEP.
20 It is further interesting to note that the PPOA never sought certification during the
21 7 years it operated the plant and held the state permit. In addition, Mark
22 Easterling, a board member of the PPOA, has represented to various individuals
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1 that he previously owned and operated a water plant and would have been well
2 aware of any requirement for PSC certification. Notwithstanding his claim to be
3 extremely knowledgeable in this area, he never raised that issue with anyone to
4 my knowledge nor did the PPOA seek certification even though the PPOA
5 charged and collected monies from Whitney's Marina for service.

6 Q. Does this complete your testimony in this matter for now?

7 A. Yes, but I will answer any other questions.
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POINT PROPERTY OWNERS ASSOC.
LORIE A. EASTERLING, PRESIDENT
324 SCENIC POINT LANE
ORANGE PARK, FLORIDA 32073

NOVEMBER 3, 1992

MR. CHARLES G. HOURIET, P.E.
DOMESTIC WASTE SECTION
DEPARTMENT OF ENVIROMENTAL REGULATION
NORTHEAST DISTRICT
7825 BAYMEADOWS WAY SUITE B 200
JACKSONVILLE, FLORIDA 32256-7577

RE: THE POINT TOWNHOMES
DER PERMIT NO. D010-139088
PERMIT RENEWAL

DEAR MR. HOURIET:

PURSUANT TO AN AGREEMENT BETWEEN THE POINT PROPERTY OWNERS ASSOCIATION AND KAREN YONGE CARR, JIM YONGE AND NOH INC. WE ARE RESPONSIBLE FOR THE OPERATION OF THE ABOVE MENTIONED WASTEWATER TREATMENT PLANT.

AFTER RECEIVING YOUR RENEWAL APPLICATION, THE YONGES SENT US A COPY OF THE PAPERWORK (AFTER A LENGHTY DELAY, IT WAS RECEIVED BY US AROUND OCTOBER 18, 1992). IN FULFILLING OUR RESPONSIBILITY OF OPERATING THE PLANT, WE CONTRACTED AN ENGINEER AND PROCEEDED TO HAVE THE APPLICATION PROCESS COMPLETED.

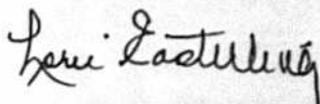
WHEN THE ENGINEER, WHO WAS ALREADY WORKING UNDER A TIME CONSTRAINT, COMPLETED THE APPLICATION, I CONTACTED MS. YONGE CARR AND TOLD HER WE NEEDED HER SIGNATURE AS OWNER OF THE PLANT. AFTER SEVERAL MESSAGES AND RETURN CALLS SHE ASKED ME TO CALL JIM YONGE AND TELL HIM WHAT THIS WAS ABOUT. I DID AS SHE REQUESTED AND HE SAID TO GIVE HER A COPY OF THE APPLICATION AND LET HER LOOK IT OVER. I CALLED HER AND SHE WAS UNCOOPERATIVE AS TO US GETTING TOGETHER TO LOOK THIS OVER. I TOLD HER WE WERE UNDER A NOVEMBER 5 DEADLINE. SHE SAID SHE WOULD CALL ME BACK. THIS WAS ON FRIDAY, OCTOBER 30. I CALLED HER AGAIN ON SATURDAY AND THERE WAS NO ANSWER. I FEEL THAT AT THIS TIME IT IS BEST TO JUST SEND YOU THE COMPLETED RENEWAL APPLICATION WITHOUT HER SIGNATURE AND LET YOU DEAL WITH THE YONGES.

EXHIBIT JEY-1

IF YOU DO CONTACT THEM, YOU MIGHT BE TOLD THAT THEY DEEDED THE PLANT TO THE PROPERTY OWNERS ASSOCIATION A NUMBER OF YEARS AGO. THIS IS NOT TRUE. THEY TRIED AND THE PROPERTY OWNERS ASSOCIATION REFUSED THE DEED. IF THEY THINK ABOUT THIS, I AM SURE THEIR MEMORY WOULD BE REFRESHED BY THE FACT THAT JIM YONGE HAS IN THE PAST FEW YEARS TRIED TO SELL THE PLANT, IN FACT HE WAS IN SERIOUS NEGOTIATIONS WITH TOM RYAN, OUR PLANT OPERATOR, FOR QUITE A WHILE.

THANK YOU FOR YOUR HELP. IF THERE ARE ANY QUESTIONS FOR THE PROPERTY OWNERS ASSOCIATION FEEL FREE TO CALL ME AT 904 269 2154.

SINCERELY,



LORIE A. EASTERLING
PRESIDENT
POINT PROPERTY OWNERS ASSOCIATION

PPOADER