

BEN E. GIRTMAN
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July 9, 1991

**ORIGINAL
FILE COPY**

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

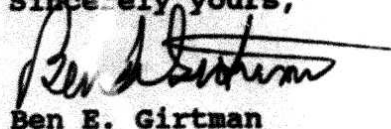
Re: Docket No. 900816-WS, Petition for Rate Increase in Martin
County by SAILFISH POINT UTILITY CORPORATION

Dear Mr. Tribble:

Enclosed for filing on behalf of Sailfish Point Utility
Corporation in the above referenced matter is the original and
twelve (12) copies of the Notice of Filing Late Filed Exhibit #13
with the Affidavit and Attachments.

Thank you for your assistance.

Sincerely yours,



Ben E. Girtman

BEG/sw
ACK Enclosures
cc/w/ enc.: Hal R. Bradford, Esq.
Mr. Frank Seidman
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 1
LIN orig 23
OPC _____
RCH _____
SEC 1
WAS _____
OTH _____

DOCUMENT NUMBER-DATE

06915 JUL -9 1991

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Rate Increase) Docket No.: 900816-WS
in Martin County by SAILFISH POINT) Submitted for filing:
UTILITY CORPORATION) July 9, 1991

NOTICE OF FILING
LATE FILED EXHIBIT #13

COMES NOW Sailfish Point Utility Corporation, Petitioner for a rate increase in the above styled proceeding, and states that:

1. Pursuant to the direction of the Presiding Officer at the final hearing held June 26-27, 1991, in the above styled proceeding, Sailfish Point Utility Corporation files herewith its Late Filed Exhibit #13 consisting of the Affidavit of Hal Bradford, Esq. and the attachments thereto.

Respectfully submitted this 9th day of July, 1991.


Ben E. Girtman

DOCUMENT NUMBER-DATE

06915 JUL -9 1991

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to Stephen C. Reilly, Esq.*, Office of Public Counsel, 111 West Madison Street, 812 Claude Pepper Building, Tallahassee, FL 32399-1400, Wm. Reeves King, Esq., 500 Australian Avenue So., Suite 600, Clearlake Plaza, West Palm Beach, FL 33401, and Catherine Bedell, Esq.*, Florida Public Service Commission, Division of Legal Services, 101 East Gaines Street, Tallahassee, FL 32399-0873 by U.S. Mail, this 9th day of July, 1991.

* By hand delivery.



Ben E. Girtman
FL BAR NO.: 186039
1020 East Lafayette Street
Suite 207
Tallahassee, FL 32301
(904) 656-3232

Attorney for Petitioner
Sailfish Point Utility Corporation

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Rate Increase)
in Martin County by SAILFISH POINT)
UTILITY CORPORATION)
_____)

Docket No.: 900816-WS
Submitted for filing:
July 9, 1991

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF MARTIN

BEFORE ME, the undersigned authority, personally appeared Affiant, Hal Bradford, who, by me being first duly sworn, deposes and says:

1. Affiant, among other duties, serves as General Counsel for Sailfish Point, Inc. and for Sailfish Point Utility Corporation.

2. At the final hearing held June 26-27, 1991, in the above styled proceeding, the Presiding Officer requested that certain information be provided as Late Filed Exhibit #13.

3. Affiant states that a diligent search has been made to locate information and documents; several previous and current employees and attorneys have been contacted; the minutes of the Property Owners Association (POA) during 1980-83 have been searched; and searches have been made through office files, law firm files, and warehoused files to be able to respond to the request for Late Filed Exhibit #13.

4. It should be noted that in correspondence at these Mobil subsidiaries, the abbreviation "M" stands for "thousands" and the abbreviation "MM" stands for "millions".

5. At the final hearing, a typed memorandum dated June 17, 1980, was discussed and was identified as "Document #19". The last sentence of paragraph 3 thereof states that "Mr. Piazza is writing some more detailed instructions for the contribution of assets to SPUC." As a result of the aforementioned search and contact with relevant personnel, no evidence has been found that Mr. Piazza ever in fact prepared such a document. However, Attachment #1 contains a letter dated June 30, 1980, from Mr. Piazza to Dennis Bloomquist responding to paragraph 4 of the aforementioned Document #19.

Also included as apart of Attachment #1 is a memorandum dated July 21, 1982, from R. A. Handler to R. J. Fletcher, confirming requirement #2 of Mr. Piazza's June 30, 1980 letter, that the cost of improvements are properly recoverable and should not be written off as a cost of goods sold.

I advise that the basis of this plant be excluded from Sailfish's 1981 cost of sales. . . .

* * *

The plant should therefore be depreciated beginning in 1981, the year it was first placed in service. [July 21, 1982 letter from R. A. Handler to R. J. Fletcher, page 1.]

We have been unable to locate Mr. Piazza, in that he left the law firm, ostensibly to follow a music career. Efforts to locate him through the Directory issue of The Florida Bar Journal have been unsuccessful.

6. At the final hearing, inquiry was made by a Commissioner as to what information might be available regarding the decision to depreciate the utility assets rather than write them off as a cost

of goods sold. As a result of the aforementioned search and contact with relevant personnel, see Attachment #1 referenced above and also see Attachment #2 which includes the following documents:

Interoffice correspondence dated December 7, 1982 from James F. Simpson to B. Garrison

Interoffice correspondence dated December 8, 1982 from F. Valeri to P. E. Sklansky

Letter dated January 7, 1983 from B. Kenneth Gatlin to Ms. Connie McCaskill

7. At the final hearing, a hand-written memorandum dated January 9, 1981, was discussed and was identified as "Document #17". Page 3 thereof, paragraph B.2. mentions the possibility of entering into a "triparte" agreement ". . . whereby at some later date SPUC would be obligated to give these [utility] assets to a local governmental agency or to the Property Owners Association." As a result of the aforementioned search and contact with relevant personnel, Affiant hereby states that, to the best of Affiant's knowledge, information and belief, no such "triparte" agreement or similar document was ever entered into. Furthermore, the July 21, 1982, memorandum in Attachment #1 is based on the premise that there was no contractual obligation to contribute the utility assets to the POA, confirming that no "triparte" agreement was entered into. However, pursuant to the Information Statement for Sailfish Point Phase I (page 20, paragraph XII (c)) dated March 25, 1980, Sailfish Point, Inc. did retain the option to transfer, no later than 1987, the utility assets either to Sailfish Point Utility Corporation, to the Property Owners Association, or to Martin County, or to some other governmental entity. Sailfish Point, Inc. exercised that option in December, 1983, by conveying

all the utility assets, including the mains and lines, to Sailfish Point Utility Corporation, as demonstrated by the warranty deed, bill of sale, note, mortgage and security agreement, and assignment of contracts and permits. The recordable documents were recorded promptly in the public records of Martin County, Florida. Subsequent thereto, as shown by the Public Offering Statement (page 31, paragraph C.1.) dated May 20, 1985, an option exists that no later than 1995, either all of the assets or the stock of Sailfish Point Utility Corporation will be conveyed either to the Property Owners Association, or to Martin County, or to some other governmental entity, or to an independent third party private utility. The above referenced portions of the Information Statement and of the Public Offering Statement were admitted into evidence in the above styled proceeding as Exhibit #5 sponsored by the Sailfish Point Property Owners Representatives (SPOR).

8. It is Affiant's understanding that certain documents in this proceeding, including the documents supplied herewith; and, including the handwritten notes dated January 9, 1981, and identified as Document #17; and including the typed memorandum dated June 17, 1980 and identified as Document #19, are subject to the attorney-client privilege or the accountant-client privilege and/or to certain other confidentiality, rights or defenses. Consistent therewith, Affiant has secured permission from the holder of the privileges to provide the information contained herein. However, all privileges, confidentiality, rights or defenses are retained except as specifically waived herein.

FURTHER AFFIANT SAYETH NOT.

Hal Best

SWORN TO AND SUBSCRIBED before me this 9th day of July, 1991.

Constance B. Reiner
NOTARY PUBLIC
State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES JUNE 25, 1995
BONDED TO THE GENERAL INS. UND.



Sailfish

LAW OFFICES OF
SMATHERS & THOMPSON
ALFRED I. DUPONT BUILDING
169 EAST FLAGLER STREET
MIAMI, FLORIDA 33131
TELEPHONE (305) 378-8823
TELEX 80-3188-TWX 810-848-2888 STAMO MIA

JUL 7 1980

JACKSONVILLE OFFICE
2103 INDEPENDENT SQUARE
JACKSONVILLE, FLORIDA 32208
(904) 386-8930

WEST PALM BEACH OFFICE
FORUM II, SUITE 106
1678 PALM BEACH LAKES BOULEVARD
WEST PALM BEACH, FLORIDA 33411
(305) 884-8880

June 30, 1980

Dennis Bloomquist, Esq.
Mobil Corporation
150 East 42nd Street
New York, New York 10017

Re: Sailfish Point, Inc. - Allocation to Costs of
Sales of Estimated Future Expenditures

Dear Dennis:

In your memorandum of June 17, 1980, addressed to J. F. Simpson, you indicated in paragraph A. 3, relating to the POA, and paragraph B. 4, relating to SPUC, that estimated future costs of development may be currently allocated to the basis of property held for sale.

As we have discussed, the Service takes the position in Rev. Proc. 75-25, 1975-1 C.B. 720, that a developer must meet certain conditions in order to currently allocate to the basis of property held for sale, the cost of estimated future expenditures. These requirements are:

1. The subdivider be contractually obligated to make the future improvement;
2. The cost of future improvements are not properly recoverable through depreciation;
3. The subdivider sign a consent fixing the period of limitations to expire one year after the expiration of the estimated period within which the developer expects to make the improvements, or one year after the expiration of a five year period, whichever is shorter;

ATTACHMENT
1

June 30, 1980

4. The subdivider furnish on a periodic basis certain additional data and information pertaining to the development.

In addition, we have discussed certain judicial decisions which have not required strict compliance with these conditions.

You might wish to provide the appropriate individuals with a summary of Rev. Proc. 75-25 in order to insure the allocation of estimated expenditures.

Very truly yours,

SMATHERS & THOMPSON



S. Joseph Piazza

SJP:ew

cc: Edmond A. Kavounas, Esq.
Thomas J. Palmieri, Esq.

OFFICE OF TAX COUNSEL

*Pres for this
to Special
file*

RECEIVED

JUL 26 1982

July 21, 1982

LEGAL

R. J. Fletcher

- cc: M. J. Bernard
- R. F. Dodds
- B. D. Garrison
- T. J. DuBois
- D. H. Bloomquist-MLDC
- R. A. Callahan-MLDC
- T. J. Palmieri-MLD(Fla.)C
- J. F. Simpson-MLD(Fla.)C

SAILFISH POINT
WATER PLANT

You have requested advice as to the treatment on Mobil's 1981 U.S. federal income tax return of Sailfish Point, Inc.'s ("Sailfish") water treatment plant.

I advise that the basis of this plant be excluded from Sailfish's 1981 cost of sales. This is based on my understanding that Mobil does not regard itself as contractually bound to contribute the plant to the Sailfish Point Property Owners' and Country Club Association, Inc.

The plant should therefore be depreciated beginning in 1981, the year it was first placed in service.

I understand that the Florida Public Service Commission regulates Sailfish's water rates. Thus, the water treatment plant is "public utility property" under §§167(1)(3)(A) and 168(e)(3)(A).

Therefore, the plant constitutes "recovery property" subject to the favorable ACRS rules of §168 only if Sailfish uses a "normalization method of accounting". §168(e)(3)(A). This term refers to Sailfish's method of computation of "tax expense" and "depreciation expense" for regulatory purposes, i.e., for setting rates and for reporting operating results in its regulated books of account.

Sailfish would be regarded as using a normalization method of accounting only if three criteria are met:

1. Sailfish uses the same method of depreciation in computing "tax expense" and "depreciation expense" for the plant, for regulatory purposes.
2. Sailfish uses a period of depreciation for the plant in computing "tax expense" that is the same as - or at least no shorter than - the period used to compute "depreciation expense". §168(e)(3)(B)(i).
3. If the amount allowable to Sailfish as an ACRS deduction for the plant differs from the amount that would be allowable under §167 (without regard to §167(1)) if Sailfish used for tax purposes the depreciation method, depreciation period, salvage value, and first and last year conventions that it

uses in computing "tax expense" for regulatory purposes, Sailfish makes adjustments to a reserve to reflect the deferral of taxes resulting from this difference. §168(e)(3)(B)(ii).

It is my understanding that these criteria are met.

The plant thus constitutes recovery property. It should be treated as 15-year public property under §168(c)(2)(E). See Rev. Proc. 77-10, §3, asset guideline class 49.3, 1977-1 C.B. 548. The ACRS deduction for 1981 should therefore be 5% of Sailfish's unadjusted basis for the plant. §168(b)(1)(A) (last column).

As 15-year public utility property, the plant qualifies for the full investment tax credit. §§46(c)(7)(A) and 48(a)(1)(B).

Finally, I am not aware at this time of any other open tax questions relating to Sailfish Point.

R. A. Handler
R. A. Handler

RAH/rmc
1755B

INTEROFFICE CORRESPONDENCE

December 7, 1982

TO: B. Garrison

CC: E. A. Callahan
E. Honig
P. E. Sklansky

SAILFISH POINT UTILITY CORP.
DEPRECIATION (BOOK/TAX)

You requested we provide background information relative to the start up of operations of SPUC.

The plant became operational on January 1, 1981, and a full years' depreciation was recorded for both book and tax.

Book depreciation, calculated on a straight line basis using the Florida Public Service Commission suggested lives, totaled \$57 M.

Tax depreciation under the ACRS classification for Public Utility property with a 15 year recovery period totaled \$137 M. The first cost of the assets totaled \$2,741,154. In addition, investment tax credit of \$155 M was recorded in 1981.

We have not reduced the basis of the assets for the connection fees collected through the present time since the fees were entirely booked as revenue (rather than CIAC).

Please advise, should you require additional information relative to the above.

James P. Simpson
James P. Simpson

JFS:jh

5537E

ATTACHMENT
2

INTEROFFICE CORRESPONDENCE

DATE: December 8, 1982

TO: P. E. Sklansky

cc: T. J. Palmieri

FROM: F. Valeri

S. Honig ✓

J. F. Simpson

SUBJECT: Sailfish Point Utility Corp.
PSC Application For Certificate

Following is a reply to the questions asked by the Florida Public Service Commission relative to Sailfish Point Utility Corporation:

Question #1. Were any capital costs of constructing the plant and related collection and distribution system included in the cost of sales of the developer, Sailfish Point, Inc.?

Reply: No. In 1981 depreciation was recorded on the subject assets. We have no plans to recover Sailfish Point Utility Corporation capital costs through cost of sales.

Question #2. What is the amount of Investment tax credit not yet used?

Reply: Since Sailfish Point Utility Corporations' federal tax return is included in Mobil Corporations' consolidated return, all 1981 ITC was fully utilized.

Question #3. How much of the deferred taxes reflected in the financial statements at 12/31/81 was calculated using 46%, how much at 48%?

Reply: The entire amount as of 12/31/81 was calculated using 46%.

Hopefully, the above will provide the PSC with the data they require to furnish our certificate.

F. Valeri
F. Valeri

FV:jh
5558f

LAW OFFICES
MADIGAN, PARKER, GATLIN, SWEDMARK & SKELDING
FORUM BUILDING, 318 NORTH MONROE STREET
TALLAHASSEE, FLORIDA

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JULIUS F. PARKER, JR.
G. KENNETH GATLIN
GAYLE SMITH SWEDMARK
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JOHN W. COSTIGAN
ROSS A. MEVOY
BEN E. GIRTMAN
RONALD A. LABASKY
KEITH C. TISCHLER

HILLARD F. CALDWELL
OF COUNSEL
JULIUS F. PARKER (1916-1988)
REPLY TO: P. O. BOX 888
TALLAHASSEE, FL 32302
TELE: (904) 882-9700

January 7, 1983

Hand Deliver

RECEIVED
JAN 10 1983
LEGAL

Ms. Connie McCaskill
Water and Sewer Department
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

RE: Docket No. 810277-WS
Sailfish Point Utility Corporation
Certificate Application

Dear Ms. McCaskill:

You had posed three (3) questions to Sailfish Point relative to this case. Those questions and the answers are as follows:

Question #1. Were any capital costs of constructing the plant and related collection and distribution system included in the cost of sales of the developer, Sailfish Point, Inc.?

Answer: No. In 1981 depreciation was recorded on the subject assets. We have no plans to recover Sailfish Point Utility Corporation capital costs through cost of sales.

Question #2. What is the amount of Investment tax credit not yet used?

Answer: Since Sailfish Point Utility Corporation's federal tax return is included in Mobil Corporation's consolidated return, all 1981 ITC was fully utilized.

Question #3. How much of the deferred taxes reflected in the financial statements at 12/31/81 was calculated using 46%, how much at 48%?

Answer: The entire amount as of 12/31/81 was calculated using 46%.

Ms. Connie McCaskill
Page 2
January 7, 1983

If further information is needed, please do not hesitate
to let me know.

Very truly yours,

B. Kenneth Gatlin

B. Kenneth Gatlin

BKG/llr

cc: Mr. Steve Tribble, Commission Clerk

bcc: Mr. Paul E. Sklansky
Mr. George E. Buscher