

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a rate increase)
in Martin County by SAILFISH POINT)
UTILITY CORPORATION)

DOCKET NO. 900816-WS
ORDER NO. 24486
ISSUED: 5/7/91

ORDER GRANTING PETITION FOR LEAVE TO INTERVENE AND
DENYING MOTION TO STRIKE AND MOTION TO DENY
PETITION FOR LEAVE TO INTERVENE

On March 18, 1991, the Sailfish Point Property Owners Representatives and Charles Buckridge (SPOR) filed a Petition for Leave to Intervene. Sailfish Point Utility Corporation (utility) has timely objected to intervention by SPOR and has filed a Motion to Strike SPOR's Response to the Utility's Objection and a Motion to Deny Intervention. Staff requested and received further explanation of allegations in the initial pleading.

SPORS' Petition for Intervention states that SPOR is an unincorporated association of twelve property owners, elected by individual unit owners and serving as an advisory committee to the incorporated owner's association which is still controlled by the developer. Charles Buckridge is the Chairman for SPOR. SPOR asserts that it represents the "sole" ratepayers of the utility. SPOR further asserts that it should intervene in addition to the Office of Public Counsel (OPC) because there are substantial issues which SPOR wishes to present which are peculiarly within its knowledge, such as inconsistencies between the assertions in the utility's application and the developer agreements, and ownership of the utility lines which SPOR asserts are to be conveyed to the homeowner's association sometime in the future. SPOR also asserts that these ownership issues raise issues as to whether the utility should be exempt from Commission regulation.

In the utility's Objection to the Petition for Leave to Intervene filed March 21, 1991, the utility objects to the dual representation of OPC and SPOR, to SPOR's authority to act, to the representations made concerning the developer agreements, and to the issue of the utility's exemption being raised in this rate proceeding.

In response to Staff's letter of March 27, 1991, requesting clarification, SPOR explained its origin as an organization representing non-developer owners at Sailfish Point, admitted that there are no formal provisions for the election of the SPOR Committee, and analogized their position to that of a shareholder's

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derivative suit. A list of the SPOR Directors and Representatives was also submitted.

On April 1, 1991, SPOR filed a Response to the Utility's Objection to Intervention. SPOR states, "...the intervenors allege that they have substantial interests which will be determined in this proceeding which are separate and apart from the interest that each rate payer has by virtue of being a customer of the utility." The response then explains in further detail the issues related to the developer agreements and future ownership of common property and the utility. The response further explains the authority SPOR has to represent the interests of owners at Sailfish Point.

On April 9, 1991, the utility filed a Motion to Strike the above-described Response of SPOR and a Motion to Deny Intervention. The utility argues that SPOR is seeking to misuse these proceedings, that the pleadings filed by SPOR are, "...misleading, ... spurious...self-serving...misrepresentations...." The utility further argues that there are no grounds to grant intervention; there is no verification that current SPOR members joined in the petition; there is no proof of authority to intervene; this is not the proper forum for "turn-over" issues; the utility is properly certificated and it is too late to raise the issue of exemption; the letter of April 2, 1991, is non-responsive to Staff's request; the March 29, 1991 response to utility's objection is non-responsive; and that rate base is already being challenged by OPC.

SPOR responded to the utility's motions on April 17, 1991, stating that the utility's motion contained unsworn testimony and conclusions of fact and that the fact that an 81 page document was required for the motions demonstrates the substantial interests of the intervenors.

Pursuant to Rule 25-22.039, Florida Administrative Code, a motion for leave to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. A two-part test is applied in evaluating whether a person has alleged a substantial interest sufficient to

entitle such person to intervene in an administrative proceeding already pending. The person must allege:

- (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and
- (2) that his substantial injury is of a type or nature which the proceeding is designed to protect.

Agrico Chemical Co. v. Department of Env'tl. Regulation, 406 So.2d 478, at 482 (Fla. 2d DCA 1981), rev.den., 415 So.2d 1359 (Fla.1982).

The prehearing officer finds, based on the above, that SPOR, as an organization of residents of Sailfish Point, all of whom are rate payers, is a "person" whose substantial interests are sufficient to grant intervention in this administrative proceeding. However, we also find that the utility has made valid arguments relating to the merits of some allegations made by SPOR. We find certain allegations made by SPOR of substantial injury are not of the type this rate proceeding is designed to protect and are remote, speculative, and irrelevant. Specifically, we find the issue of whether, based on a possible future event, the utility should be exempt from Commission jurisdiction to be completely outside the scope of this rate proceeding. We also find SPOR's economic interests in this proceeding as they relate to possible future ownership of the utility to be without sufficient immediacy and finality, and therefore remote and speculative for the purposes of this rate proceeding. See, Intern. Jai-Alai v. Pari-mutuel Com'n, 561 So.2d 1224 (Fla.3rd DCA 1990).

In setting rates which are just, reasonable, compensatory and not unfairly discriminatory, we are charged under the statute, to:

...consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to, debt interest; the requirements of working capital; maintenance, depreciation, tax, and

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operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service....

Section 367.081(2), Florida Statutes.

In granting intervention, we do so with the understanding that issues raised by SPOR are to be relevant and directly related to this rate proceeding, and designed to foster our pursuit for a determination of rates which are just, reasonable, compensatory, and not unfairly discriminatory. We will not address issues which are outside the scope of this proceeding or which are beyond our jurisdiction.

Having reviewed the Petition for Leave to Intervene and all the related filings summarized above and based on the foregoing analysis, we find that the Petition for Leave to Intervene should be granted and that utility's Motion to Strike and to Deny Petition for Leave to Intervene should be denied.

Pursuant to Rule 25-22.039, Florida Administrative Code, SPOR takes the case as it finds it. However in the interest of fairness, extending the due date for filing of SPOR's testimony would be appropriate in this case. Therefore, SPOR's prefiled direct testimony is due by close of business (4:45 p.m.), Friday, May 10, 1991.

It is, therefore,

ORDERED by the Prehearing Officer that the Petition for Leave to Intervene, filed by Sailfish Point Property Owners Representatives, is hereby granted. It is further,

ORDERED that utility's Motion to Strike Response of Sailfish Point Property Owners Representatives and Charles Buckridge to Utility Objection to Petition for Leave to Intervene and Motion to Deny Petition for Leave to Intervene are hereby denied. It is further,

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents that are hereinafter filed in this proceeding to William Reeves

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King, Attorney for Sailfish Point Property Owners Representatives,
500 Australian Ave. So., Suite 600, Clearlake Plaza, West Palm
Beach, FL 33401. It is further

ORDERED that the due date for filing Intervenor's testimony
for the Sailfish Point Property Owners Representatives is hereby
extended to May 10, 1991.

By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 7th day of MAY, 1991.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

CB

MEMORANDUM

May 6, 1991

TO : DIVISION OF RECORDS AND REPORTING
FROM : DIVISION OF LEGAL SERVICES (BEDELL) *CB*
RE : DOCKET NO. 900816-WS - PETITION FOR A RATE INCREASE IN
MARTIN COUNTY BY SAILFISH POINT UTILITY CORPORATION

24486

Attached is Order Granting Petition for Leave to Intervene and Denying Motion to Strike and Motion to Deny Petition for Leave to Intervene, consisting of -5- pages, which is ready to be issued.

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3:00 Hand

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cc: Division of Water and Sewer

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