

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SAILFISH POINT )	DOCKET NO. 891114-WS
UTILITY CORPORATION for rate increase )	ORDER NO. 23123
in Martin County )	ISSUED: 6-26-90
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD  
BETTY EASLEY

ORDER DISMISSING APPLICATION FOR INCREASED  
RATES AND REQUIRING REFUND OF INTERIM REVENUES

BY THE COMMISSION:

BACKGROUND

Sailfish Point Utility Corporation (Sailfish Point) is a Class C water and wastewater utility located in Martin County. Sailfish Point is wholly owned by Sailfish Point, Inc., which is wholly owned by Mobil Land Development Corporation.

By letter dated September 1, 1989, Sailfish Point requested approval to use the twelve month period ended June 30, 1989, as a test year for an application for increased rates. Its request was granted by letter dated September 21, 1989. Sailfish Point completed the minimum filing requirements for a general rate increase on December 18, 1989.

Due primarily to the magnitude of the requested increase, on its own motion, this Commission set this matter for an administrative hearing on June 25 and 26, 1990, with a prehearing conference scheduled for June 4, 1990. A copy of the case schedule for this proceeding was sent to all interested persons, accompanied by a memorandum from the Director of the Division of Records and Reporting, dated January 16, 1990.

By Order No. 22435, issued January 22, 1990, the Prehearing Officer established a schedule to govern the key activities in this case. According to Order No. 22435, "[w]ithin thirty days after the time schedule for this case has been mailed to it, Sailfish Point shall begin sending an informational notice to its customers. The notice shall be prepared in accordance with Rule 25-22.0406(5), Florida Administrative Code, and approved by Staff."

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By letter dated January 23, 1990, counsel for Sailfish Point filed, with the Division of Records and Reporting, an informational notice prepared in accordance with Rule 25-22.0406(5), Florida Administrative Code, and approved by the Staff of this Commission (Staff). A revised notice, which was also approved by Staff, was filed with the Division of Records and Reporting on February 14, 1990.

On March 16, 1990, this Commission issued an audit report for this case. Copies of the report were forwarded to both Sailfish Point and the Office of Public Counsel (OPC).

On March 26, 1990, Sailfish Point filed the direct testimony and exhibits of Messrs. Frank Seidman and William D. Reese, P.E. As a result of this audit, Mr. Seidman's testimony and exhibits included a number of revisions to Sailfish Point's positions and revenue requirements in its MFRs.

Sailfish Point began providing notice to its customers of the proposed increase with its April billing. Sometime toward the end of April, a flood of customer reaction began to pour in to this Commission. On April 26, 1990, OPC filed notice of its intervention in this proceeding.

#### MOTION TO DISMISS

In addition to its notice of intervention, on April 26, 1990, OPC also filed a motion to dismiss Sailfish Point's application, based upon the latter's alleged failure to provide timely notice of the proposed rate increase to its customers. OPC served a copy of its motion upon counsel for Sailfish Point by U.S. Mail; accordingly, Sailfish Point had five extra days, or until the close of business on May 8, 1990, to file a response thereto. Sailfish Point did not file a response until May 11, 1990.

On May 18, 1990, OPC filed a motion to strike Sailfish Point's response to the motion to dismiss. OPC argues that, since the utility's response was not timely filed, this Commission may not consider it when ruling upon OPC's motion to dismiss.

We agree that we may reject Sailfish Point's response as untimely. Nevertheless, since dismissing Sailfish Point's application is a somewhat harsh sanction, we will address the merits of its arguments.

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In both OPC's motion and Sailfish Point's response, the parties each begin by referencing the requirements of Rule 25-22.0406(5), Florida Administrative Code, as follows:

(5) Within 30 days after the rate case time schedule has been mailed to the utility, the utility shall begin sending a notice approved by the Commission or its staff to its customers containing:

(a) A statement that the utility has applied for a rate increase and the general reasons for the request;

(b) The locations at which copies of the MFRs and synopsis are available;

(c) The time schedule established for the case, and the dates, times and locations of any hearings that have been scheduled; and

(d) A comparison of current rates and service charges and the proposed new rates and service charges.

1. Such notice shall be completed at least 10 days prior to the first scheduled service hearing.

The parties then each attempt to chronicle the sequence of events in this case, much as in the background section of this order. According to OPC, since the case schedule was mailed to Sailfish Point on January 16, 1990, as evidenced by Exhibit A to its motion, pursuant to Rule 25-22.0406(5), Florida Administrative Code, and Order No. 22435, Sailfish Point was required to begin noticing its customers on or before February 15, 1990. OPC argues that, in spite of the fact that the customer notice was finalized in no event later than February 14, 1990, it was not mailed to the customers until the utility's April billing. According to OPC, since intervenor testimony was due no later than April 25, 1990, Sailfish Point's notice was insufficient and untimely.

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OPC further contends that Sailfish Point's failure to provide timely notice "effectively eliminated the customers' opportunity to conduct discovery and prepare a coordinated case in opposition to the proposed rate increase." Finally, OPC argues that Sailfish Point's preclusion of the customers' timely point of entry into this proceeding clearly affects their substantial interests and constitutes a denial of their due process rights.

In its response, Sailfish Point first argues that it has complied and will continue to comply with the requirements of Rule 25-22.0406, Florida Administrative Code. Sailfish Point then suggests that our Staff approved both the content and the mailing schedules for the customer notices. Although we are informed that Staff did approve the content of the notice, we do not believe that it approved the mailing of the notice with Sailfish Point's April billing.

Next, Sailfish Point states that it first submitted a draft notice on January 19, 1990, for inclusion in its February billing, and that this notice was verbally approved by Staff on January 22, 1990. This is the notice that was filed with the Division of Records and Reporting on January 23, 1990. According to Sailfish Point, after this notice was printed, a review by company personnel " . . . indicated that there were some changes required." We have reviewed both the original notice and the revised notice and do not believe that any material changes were made, other than to bolster the utility's contention that it requested less of a revenue increase than that to which it may be entitled. Notwithstanding the above, Sailfish Point argues that these changes could not be made, approved, and printed in time to mail with its February billing. Further, Sailfish Point argues that, since Rule 25-22.0406(5), Florida Administrative Code, could be complied with by merely beginning to send the notice, it complied with this requirement by sending a copy of the unrevised notice to a "realtor customer."

Sailfish Point also states that it received our approval to send the informational notice along with its notice of the interim rate increase and that it intended to send the two notices with its March billing. Although the decision on interim rates was made at the February 6, 1990 Agenda Conference, Sailfish Point thought that it would be "prudent to wait until the interim rate order was issued before finalizing

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the interim rate notice." Order No. 22609, by which the Commission granted interim rates, was issued on February 27, 1990. Accordingly, there was adequate time for Sailfish Point to have included the notice with its March billing.

Sailfish Point states next that, even though it provided notice to its customers along with the billing it mailed out in early April, intervenor testimony was not due until April 25, 1990. Sailfish Point, therefore, contends that OPC should have filed a motion for an extension of time rather than a motion to dismiss.

Sailfish Point also argues that OPC cannot complain of lack of notice, since OPC was asked by one of the Commissioners at the February 6, 1990 Agenda Conference if it intended to intervene.

Finally, Sailfish Point states that it has no objection to any customers filing prepared testimony so long as it has an opportunity to prepare a response before the hearing.

Rule 25-22.0406, Florida Administrative Code, our rule regarding notice of general rate applications, is applicable to each of the industries that we regulate. It is worded as it is in order to allow utilities that may serve hundreds of thousands or even millions of customers a reasonable time within which to notify all of their customers. A reasonable reading of that rule for a utility of Sailfish Point's size would be for it to have begun noticing within thirty days of the date the case schedule was mailed to it and to have completed noticing within one or, at most, two billing cycles.

As for Sailfish Point's argument that it complied with the letter of the rule by providing notice to one "realtor customer," we do not believe that this interpretation represents a good faith reading of Rule 25-22.0406, Florida Administrative Code. Further, we cannot help but wonder whether this "realtor customer" is not, in fact, an affiliate of Sailfish Point.

Based upon the analysis above, we do not believe that Sailfish Point made a good faith effort to provide timely notice to its customers. We also believe that Sailfish Point's failure to provide timely notice has denied its customers a

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timely point of entry into this proceeding and that that failure constitutes a violation of their right to procedural due process.

If notice were the only problem, we might cure the problem by extending the customers' testimony filing date. It is questionable whether we would extend the date for the hearing itself, since the test year is growing staler by the day. However, notice is not the only problem. In addition to the above, as noted in the background section of this memorandum, along with the testimony of Mr. Frank Seidman, Sailfish Point filed revised MFR schedules, which resulted in a revised revenue requirement request. In other words, Sailfish Point basically filed a new rate case when it filed its testimony. Although it waited until almost the last minute to serve notice of its application upon its customers, the revised revenue amounts are not referenced in the customer notice. We could, therefore, treat Sailfish Point's application much as we did the application of General Development Utilities, Inc., (Order No. 18335, issued October 22, 1987) in which we continued the proceeding until the utility either corrected its MFRs or its prefiled testimony.

We believe that each of the problems discussed above, taken alone, are compelling reasons to dismiss Sailfish Point's application. However, taken together, we believe that they are fatal to this action. Accordingly, we find it appropriate to dismiss Sailfish Point's application upon both OPC's and our own motion.

#### REFUND OF INTERIM RATES

By Order No. 22609, issued February 27, 1990, we suspended Sailfish Point's proposed rates and approved an interim rate increase subject to refund. The approved interim revenues represented an increase over test year revenues of \$160,591 (131.33 percent) for water and \$132,054 (201.14 percent) for wastewater. The total interim revenue requirement is \$282,374 for water and \$197,708 for wastewater. In order to guarantee any potential refund, Sailfish Point filed a corporate undertaking, in the amount of \$292,646, guaranteed by its parent company, Sailfish Point, Inc.

In its original request for a rate increase, Sailfish Point did not specifically request an interim increase in multi-residential rates; however, the information pertaining to

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multi-residential service was included in the billing analysis under the "general service" category. By Order No. 22760, issued April 2, 1990, we reconsidered our original interim rate decision and approved an interim increase in water and wastewater rates for multi-residential service. This decision had no impact on the approved interim revenue requirements.

Under Section 367.082(4), Florida Statutes, if a utility's approved final revenues do not exceed its approved interim revenues, it must refund the difference between the interim and the final revenues, plus interest. Since we have granted OPC's motion to dismiss, Sailfish Point's approved final revenues are its original revenues, which do not exceed the approved interim revenues. Accordingly, all interim revenues in excess of Sailfish Point's original authorized revenues shall be refunded with interest in accordance with Rule 25-30.360, Florida Administrative Code.

It is, therefore,

ORDERED by the Florida Public Service Commission that Sailfish Point Utility Corporation's application for increased rates is hereby dismissed upon the motion of both the Office of Public Counsel and this Commission, as set forth in the body of this Order. It is further

ORDERED that Sailfish Point Utility Corporation shall refund all interim revenues collected in excess of its originally authorized revenues, plus interest, in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that this docket shall remain open until the refund has been finalized and verified by Staff.

By ORDER of the Florida Public Service Commission,  
 this 26th day of JUNE, 1990.

  
 STEVE TRIBBLE, Director  
 Division of Records and Reporting

( S E A L )

RJP

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.