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June 18, 1991



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 are the original and  
twelve (12) copies of the Utility's Motion to Strike.

Thank you for your assistance.

Sincerely yours,

Ben E. Girtman

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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 ) June 18, 1991  
\_\_\_\_\_ )

UTILITY'S MOTION TO STRIKE  
ADDENDUM AND TO STRIKE ALL PRE-FILED  
TESTIMONY AND EXHIBITS OF ROGER W. RASMUSEN

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

1. At the Prehearing Conference held June 6, 1991 in the above styled case, the Prehearing Officer granted in part the Utility's Motion in Limine to Strike Certain Testimony and Exhibits of Witness Roger W. Rasmusen and the Utility's Motion to Compel SPOR Response to the Utility's First Request for Production.

2. Attached as Exhibit "A" is a portion of the transcript of that June 6 Prehearing Conference. The Prehearing Officer specifically made the following rulings:

[COMMISSIONER EASLEY:] Now what I'm going to do is deny in part and grant in part both motions. I will not accept the full thousand-paged document by Mr. Rasmusen. It would be impossible to determine what documentation in there is going to assist the Commission in making the determination as to what issues affect rate base.

I will ask that the [SPOR] Intervenors identify within Mr. Rasmusen's document each page or paragraph of the subject exhibits on which you intend to rely on the specific, relevant issues. And if you'll recall at the beginning, we talked about when granted the right to intervene, it was going to be on

relevant issues. And to identify the applicable issue or issues to be addressed by those exhibits.

So I want some specificity as to what within Mr. Rasmusen's thousand-paged document you are going to rely on, and I want to make sure that those are issues that are relevant to this rate proceeding. [Tr. page 20, lines 8-25.]

\* \* \*

[OPC ATTORNEY:] Essentially, he's supposed to go through those thousand pages and excise the most important and relevant portions to bring to the attention of this Commission.

COMMISSIONER EASLEY: On the points on which Mr. Rasmusen is going to rely for those relevant issues. [Tr. page 24, lines 8-16.]

3. Attached as Exhibit "B" is SPOR's Addendum to the Pre-Filed Testimony of Roger W. Rasmusen, identified as Exhibit RWR-6. It was filed as their response to the Prehearing Officer's rulings on the Utility's Motion to Strike and Motion to Compel. It consists of six (6) single-spaced, typed pages. Each line thereon lists either single pages, multiple pages, or multiple inclusive pages (some of which include dozens of pages each). Some of the pages have paragraphs or sections identified. Many do not. Listings of multiple inclusive pages do not identify paragraphs or sections.

4. The Utility has used the list of pages in the Addendum to identify and paper clip all the pages listed in that Addendum in preparation for reading and evaluation. That effort to identify and clip the specified portions and/or pages of RWR-1 through RWR-5 took almost two (2) hours alone. A cursory examination of the

marked pages suggests that a majority of the original SPOR documents have been listed in the Addendum.

5. The Utility moves to strike SPOR's Addendum to the Pre-Filed Testimony (RWR-6) and further moves to strike the pages of exhibits listed therein and all other SPOR exhibits on the grounds that: a) the list does not comply with the rulings of the Prehearing Officer directing that the "thousand pages of exhibits" be reduced only to those which may be specifically relevant to the issues; b) it fails to identify the applicable issue or issues supposedly to be addressed by those listed pages; c) it fails to identify each page or paragraph on many of the pages on which SPOR seeks to rely; and d) the documents are not relevant to this rate proceeding, are outside the jurisdiction of the Commission, and are not necessary for the Commission to consider for it to fully exercise its jurisdiction and to render a final order in this proceeding; and e) the documents were originally filed to try to support a claim of ownership which the Prehearing Officer has ruled is beyond the jurisdiction of this Commission. The Utility further moves to strike the prefiled testimony of the SPOR witness on the same grounds.

6. The Utility previously filed a contingent motion for extension of time in which to file a response to the SPOR testimony and exhibits. The failure of SPOR to reduce the number of pages of exhibits, to show their relevance and applicability to relevant issues in this case, and otherwise to comply with the rulings of the Prehearing Officer places the Utility in an untenable position.

The nature of rebuttal ordered by the Prehearing Officer should be in response to the nature of the Addendum. However, because the Addendum is vague, does not respond to the Prehearing Officer's ruling, does not address the issues, and is deficient for the other reasons set forth herein, the Addendum does not lend itself to being addressed by rebuttal. Furthermore, it is fundamentally unfair for a party to try to avoid presenting direct, positive testimony and exhibits to prove relevant issues in the case. This massive data, sought to be imposed at this time, with no specificity and no applicability to issues which are relevant to the case, puts the utility in a quandry as how to respond, either now or at the final hearing. We just do not know what he is trying to say that is relevant to this utility rate case.

7. The Prehearing Officer required SPOR to comply with the Prehearing rulings by Friday, June 14, eight (8) days after the rulings were made on June 6. The Utility was given "the weekend plus one day" in which to review the materials and prepare rebuttal for service to arrive in West Palm Beach, Florida, on Tuesday, June 18. The undersigned counsel received a copy of the Addendum on Friday, June 14, by facsimile from the Utility's consultant who had gone to the Intervenor's Counsel's office to acquire a copy. Contrary to the certificate of service, the undersigned counsel did not receive a copy by hand delivery on Thursday, June 13, but by U.S. Mail on Saturday, June 15.

8. In a good faith effort to comply with the Prehearing Officer's rulings, the Utility has attempted to prepare rebuttal to

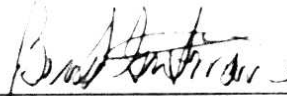
Witness Rasmussen, but has been unable to make sense of the pages listed in the Addendum and has been unable to determine just what relevant issues are supposed to be addressed by the documents and to which specific parts of the documents the Utility should respond.

WHEREFORE, Sailfish Point Utility Corporation moves to strike the Addendum and all the SPOR exhibits as well as the prefiled testimony of Mr. Rasmussen. The Utility files the Additional Rebuttal Testimony of Mr. Frank Seidman for the purpose of placing the Utility's position on the record that SPOR has failed to comply with the Prehearing Officer's directions and that, therefore, no specific response can be made either now or at the hearing. The Utility is genuinely concerned that this irrelevant material will merely clutter the record.

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 hand deliver, this 18th day of June, 1991.

\* Served by Facsimile



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