

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 22, 1991

ORIGINAL
FILE COPY

APPENDICES FOR
BRIEF OF
SAILFISH POINT UTILITY CORPORATION

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DOCUMENT NUMBER-DATE

07415 JUL 22 1991

FPSC-RECORDS/REPORTING

APPENDIX "A"

**TRANSFER OF JURISDICTION
BETWEEN MARTIN COUNTY AND
THE FLORIDA PUBLIC SERVICE COMMISSION**

and

PRIOR RATESETTING HISTORY OF THE UTILITY

On March 19, 1980, Certificates 330-W and 227-S were granted by Public Service Commission Order No. 9289, Docket No. 790904-W and 790905-S. Martin County subsequently reacquired jurisdiction over this utility in 1980, but then transferred jurisdiction back to the Public Service Commission, which was recognized by Order No. 9684 in Docket No. 5818-WS (MC) issued on December 1, 1980. By Order No. 11673 in Docket No. 810277-WS, the Commission granted Certificates 394-W and 335-S on March 4, 1983. Rates were set at the level previously approved by the PSC in 1980, prior to losing jurisdiction to Martin County. See also Amendatory Order No. 11673-A. With the exception of a price index adjustment approved by Order No. 12963 in Docket No. 830586-WS issued February 8, 1984, and the price index and pass-through adjustments discussed below, Petitioner's rates are as set in Docket No. 810277-WS.

On December 18, 1989, this utility sought interim and permanent rate increases in Docket No. 891114-WS. By Order No. 22609 the Commission initially granted the interim increase, but by its Order No. 23123 the Commission dismissed



the rate case and required a refund of all interim rates thus far collected. The refund was completed in accordance with the Commission's order.

On July 27, 1990, the utility filed with the Commission its 1990 Price Index and Pass-Through Petition pursuant to Subsections 367.081(4)(a) and (b), Florida Statutes, and Rules 25-30.420 and 25-30.425, F.A.C., for services rendered on or after September 25, 1990. These index and pass-through adjustments have been placed in effect. However, those rate adjustments have not been sufficient to enable the utility to earn a fair and reasonable rate of return.

Fisher 2
Hammer 4
W.S. 2
Hardie 2
W.S. 2

*1 copy
plans*

**INFORMATION STATEMENT
FOR
SAILFISH POINT PHASE I
BUTCHERS ISLAND, MARTIN COUNTY, FLORIDA
MARCH 25, 1960**

THIS INFORMATION STATEMENT SHALL BE DELIVERED ONLY IN THE STATE OF FLORIDA TO PROSPECTIVE PURCHASERS OF PLATTED PROPERTY WITHIN PHASE I OF SAILFISH POINT, OTHER THAN A COMMISSIONER. THOSE PERSONS INTERESTED IN PURCHASING A COMMISSION WILL RECEIVE A PROSPECTUS FOR SUCH COMMISSIONS AS REQUIRED UNDER FLORIDA LAW.

THIS INFORMATION STATEMENT IS INTENDED ONLY FOR THOSE PURCHASERS LIVING OR PHYSICALLY PRESENT IN THE STATE OF FLORIDA. IN NO EVENT DOES THIS INFORMATION STATEMENT CONSTITUTE AN OFFERING WHERE SUCH OFFERING IS PROHIBITED BY LAW.

Mr. & Mrs. Michael J. Del Colto



Club for its own system. These irrigation systems are owned by the Association and the Golf Club, respectively.

(b) Hook-Up Charges and Tariffs.

SPUC has applied to and received conditional approval from the Florida Public Service Commission for Certificates of Public Convenience and Necessity to operate the potable water and wastewater treatment plant, which approval is subject to acceptance of certain financial assurances related to the completion and operation of such plant. As part of its application to the Florida Public Service Commission, SPUC established a proposed tariff for water and wastewater services. Each tariff establishes the hook-up charges for each Residence together with rates for water and wastewater treatment services which SPUC will charge. These tariffs and charges have received conditional Public Service Commission approval, as described above.

These tariffs provide that SPUC will charge \$2,000 to connect each Residence constructed on a single family detached lot and each townhouse residence to the water and wastewater treatment systems. In addition purchasers of such residences will be required to purchase a meter for potable water and a meter for irrigation water at a cost of \$84.

The tariffs include these monthly charges which we estimate that SPUC will charge for water and wastewater treatment. Based on a current estimate of average monthly use of potable water, an owner of a single family detached lot or a townhouse residence may expect to pay approximately \$25 per month for water. The estimated monthly charges for wastewater services will be approximately \$25 per month per single family detached lot or townhouse residence. There may be a charge for irrigation water. These figures are based on 1979 dollars and do not take into account the effect of inflation which may cause these charges to increase.

We hereby disclaim any and all warranties, whether express or implied, concerning the tariffs or rates which will be charged by SPUC or whatever entity provides water and wastewater treatment services to Sailfish Point residents.

(c) Ownership of SPUC Assets.

We currently own the facility, including structures, pipes, and pumps, which constitutes the Sailfish Point water and wastewater treatment facility. At some time in the future, but no later than 1987, we shall convey all or any part of this facility and/or the assets of SPUC to SPUC or to the Association, or to Martin County, or to some other government entity, provided the facility is maintained to provide water and wastewater treatment facilities and services to all owners and users of Sailfish Point property. Alternatively, we shall convey the shares of SPUC to the Association, or to Martin County, or to some other government entity, provided the facility is maintained to provide water and wastewater treatment facilities and services to all owners and users of Sailfish Point property. The Association shall not be required to pay for such assets or shares but shall have no right to refuse the conveyance. In the event the SPUC assets or shares or any part thereof are conveyed to the Association, or to Martin County, or any other governmental entity, the Developer shall have no further obligation to complete any uncompleted portion of the facility which it has conveyed. In the event the SPUC assets or shares are conveyed to Martin County, or any other governmental entity, the rates charged for water and wastewater treatment services will be regulated solely by Martin County and may be higher than the rates charged by SPUC.

PUBLIC OFFERING STATEMENT

FOR

PLAT NOS. 1, 1B, 4, 8, 10 AND 11

PHASES I AND II OF

SAILFISH POINT

DEVELOPED BY

SAILFISH POINT, INC.

SUITE 601, ADMIRALTY BUILDING

4440 PGA BOULEVARD

PALM BEACH GARDENS, FLORIDA 33410

5-20-85

EFFECTIVE DATE

THE PENNSYLVANIA REAL ESTATE COMMISSION REQUIREMENTS OF THIS BROKER, DEVELOPER OR SUBDIVIDER DOES NOT CONSTITUTE APPROVAL OF THE LAND BEING OFFERED FOR SALE OR LEASE. THE PENNSYLVANIA REAL ESTATE COMMISSION HAS NOT IN ANY WAY PASSED UPON THE MERITS OF SUCH OFFER.

Legl/sfp/311/form

Mr. & Mrs. Michael J. Del Collo

C. WATER SUPPLY:

1. Central Water System:

Water is supplied by a central water system. Water has been supplied to a point on the lot line of each lot in Plat Nos. 1, 4, 8, 10 and 11, and to the first eleven townhouses on Plat No. 1B. Please refer to the information following the chart in Section VIII.A. for details regarding installation of the water distribution lines to the remaining seventeen townhouses. No individual wells are permitted for lot purchasers. The water treatment plant and distribution system is currently operating. Until Phase II of the water treatment plant is completed in approximately 1988, the water treatment plant for Phase I is expected to be sufficient for the needs of any Residence that is constructed on Plat Nos. 4, 8, 10 and 11.

SPUC currently owns the structures, pipes, pumps and land which constitute the Sailfish Point water and wastewater treatment facilities. The Developer has completed the wastewater treatment plant which will serve the entire Sailfish Point Property. The Developer has completed Phase I of the water treatment plant. Phase II, which will service the remainder of Sailfish Point, is estimated to be complete in 1988. The Developer has no obligation, and does not intend, to complete water treatment facilities or wastewater distribution and collection lines for any portion of the Sailfish Point Property which it does not develop. At some time in the future, but in all events prior to December 31, 1995, the Developer will either transfer its stock ownership in SPUC or will cause SPUC to convey all of the then existing facilities, including any liabilities relating to such facilities or the operations of SPUC, to one or more of the following entities only: (i) the Property Owners' Association; (ii) Martin County; (iii) some other governmental entity; or (iv) an independent third party utility company; provided, in all events, that the facilities are maintained to provide water and wastewater treatment services to owners and users of Sailfish Point property. Upon such conveyance or transfer, the Developer shall have no further obligation to complete any uncompleted portion of the facilities so conveyed. If conveyed to the Property Owners' Association, it shall not be required to pay for such water and wastewater treatment facility or shares of SPUC so conveyed to it, but it shall have no right to refuse any such conveyance. In the event another entity or third party becomes the owner of such facilities or the shares of SPUC, the rates charged for water and/or wastewater treatment services may be regulated solely by the transferee and may be higher than the rates charged by SPUC.

The Developer has caused independent engineers to conduct hydrological studies and surveys to determine the sufficiency and quality of the water available to Sailfish Point. These studies and surveys indicate that there appears to be an adequate supply of water to meet the needs of residents and users. The surveys and studies further indicate that the raw water will be suitable for drinking only after it has been purified in the central system. Water is periodically tested by County Health Authorities for purity and quality. THE DEVELOPER DOES NOT MAKE ANY REPRESENTATIONS CONCERNING THE SUFFICIENCY, POTABILITY AND QUALITY OF THE WATER AVAILABLE TO RESIDENTS AND USERS OF THE SAILFISH POINT PROPERTY.

2. Water and Wastewater Charges:

SPUC has received the requisite Certification of Public Convenience and Necessity to operate the potable water and wastewater treatment plant. The Florida Public Service Commission (the "PSC") has approved tariffs for water and wastewater services (monthly service rates) which establish a monthly fixed charge (base facility charge) for each Residence together with rates for water and wastewater treatment services which SPUC will charge its customers. The approved tariffs provide that SPUC will also charge a \$4,000 service availability charge to each residence constructed on a single family detached lot (\$2,500 for water and \$1,500 for wastewater). This service availability charge will be used in part to connect the Residence to the water and wastewater treatment systems and is a one time, non-refundable charge for initiation of service. This service availability charge is subject to change, and possible increase, in the future. In addition to the initial service availability charge, purchasers of single family detached residences will be required to pay a meter installation fee for potable water and a meter installation fee for irrigation water. The cost of each meter is expected to be One Hundred Seventy-Five Dollars (\$175.00) for one inch service, or Three Hundred Ten Dollars (\$310.00) for a one and one-half inch service irrigation water meter.

The tariffs include those monthly charges which the Developer estimates SPUC will charge for water and wastewater treatment. For a one inch service, an owner of a single family detached lot or townhouse can expect to pay approximately Forty-Five Dollars (\$45.00) per month for water, including a Twenty-Eight Dollar and Sixty-Two Cent (\$28.62) base facility charge per month for water, plus a charge based on the monthly use of potable water. There may be an additional charge for irrigation water. Individual usage will determine the monthly payments. The current monthly fees and charges are based on 1984 dollars and do not take into account the effect of inflation which may cause tariffs and charges to change and possibly increase in the future. SPUC will charge a Thirteen Dollar and Eighty-Four Cent (\$13.84) base facility charge per month for wastewater disposal, plus a charge based on monthly use with a total maximum charge of Twenty-Eight Dollars and Eighty-Four Cents (\$28.84) per month. These costs are subject to change, and possible increase, in the future.

3. Availability of Water Treatment:

It is the policy of Martin County to deny certificates of occupancy to structures which do not have available to them water and wastewater facilities. Because of the terms of the Declaration, and because of existing water supply conditions in Martin County, if the water system facility is not operational for any reason whatsoever, there will be no water service available to a Residence.

D. PUBLIC UTILITIES:

1. Electricity:

Florida Power and Light Company will provide electrical service to Sailfish Point. Electrical service lines have been extended to the front of each of the single family detached lots in Plat Nos. 1, 4, 8, 10 and 11, as

well as the first eleven townhouses on Plat No. 1B. Please refer to the information following the chart in Section VIII.A. for details regarding the installation of electrical service to the remaining seventeen townhouses. Florida Power and Light will charge purchasers for the cost of bringing primary service from the lot line to an individual Residence. The current estimated cost for this is approximately \$266, plus a \$25 one time connection fee.

2. Telephone:

Southern Bell Telephone and Telegraph Company will provide telephone service to Residences in Sailfish Point. Primary service lines have been extended to each of the single family detached lots in Plat Nos. 1, 4, 8, 10 and 11, as well as the first eleven townhouses on Plat No. 1B. Please refer to the information following the chart in Section VIII.A. for details regarding the extension of primary service lines to the remaining seventeen townhouses. It is the policy of Southern Bell Telephone and Telegraph Company that, depending on the purchaser's previous credit history, an initial deposit may not be required. The cost for telephone service depends upon the type of service and the number of telephone units.

3. Gas:

There is no natural gas available to Sailfish Point.

E. SEWAGE DISPOSAL FACILITIES:

1. Central Sewage System:

Sewage disposal is provided through a central collection system. Wastewater mains have been installed to a point on the property line of each lot in Plat Nos. 1, 4, 8, 10 and 11, as well as the first eleven townhouses on Plat No. 1B. Please refer to the information following the chart in Section VIII.A. for details regarding the installation of wastewater mains to the remaining seventeen townhouses. The central wastewater treatment plant is currently operating and has the capacity to receive and treat wastewater from all Residences in Sailfish Point.

Please refer to Section VIII.C.1. (Central Water System) for details concerning ownership of the wastewater treatment facilities and to Section VIII.C.2. (Water and Wastewater Charges) for details on wastewater charges.

2. Availability of Wastewater Treatment:

It is the policy of Martin County to deny certificates of occupancy to structures which do not have available to them water and wastewater facilities. Because of the terms of the Declaration, and because of existing water supply conditions in Martin County, if the wastewater system facility is not operational for any reason whatsoever, there will be no wastewater treatment service available to a Residence.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SAILFISH POINT UTILITY COMPANY for certificates to operate a water and sewer utility in Martin County, pursuant to Section 367.171, Florida Statutes.) DOCKET NO. 810277-MS(AP)) ORDER NO. 11673) ISSUED: 3-4-83
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The following Commissioners participated in the disposition of this matter:

CHAIRMAN GERALD L. GUNTER
COMMISSIONER JOSEPH P. CRENSHAW
COMMISSIONER JOHN R. MARKS, III
COMMISSIONER SUSAN W. LEISNER

ORDER GRANTING CERTIFICATES AND SETTING RATES

BY THE COMMISSION:

On September 23, 1980, the Board of County Commissioners of Martin County adopted a resolution, No. 80-9.15, making the provisions of Chapter 367, Florida Statutes, relating to the regulation of water and sewer systems, effective in that county. The effect of the resolution is to invoke Public Service Commission jurisdiction over water and sewer utilities in Martin County, except for those exempt from Commission regulation by Section 367.022, Florida Statutes.

In Order No. 9684, issued December 1, 1980, we required all water and sewer utilities under our jurisdiction in Martin County to register with this Commission, apply for a certificate authorizing them to provide service, and to supply information which would allow the Commission to set and approve rates.

On July 15, 1981, Sailfish Point Utility Company filed its application for certificates to operate a water and sewer utility in Martin County. Section 367.171, Florida Statutes, at that time, required this Commission to establish rate base. Therefore, a rate case was begun. However, that section has now been changed and a rate case is no longer required. The utility has indicated that it does not wish to pursue the rate case at this time. Therefore, after review of the company's present rates and determining that they were not overcharging, we find it appropriate to approve those rates that were previously approved by this Commission in 1980, prior to this Commission losing jurisdiction in Martin County.

The utility has filed a map of its existing system, a description of the area served by the system, a tariff listing all rates and charges, and such other financial information as has been required by the Commission. The utility has paid the appropriate filing fee as required by Section 367.161, Florida Statutes. It is therefore in substantial compliance with Section 367.171, Florida Statutes, and should be granted a water and sewer certificate.

SERVICE TERRITORY

The utility should be authorized to serve the following described territory:

Township 36 South, Range 41 East
Section 8
The South 3,000 feet of said Section 8

Section 16 and 17

All of Sections 16 and 17 lying on Hutchinsons Island between the Indian River on the West, the Atlantic Ocean on the East, and the St. Lucie Inlet on the South.

EXHIBIT NO.
874-83

"A.P.C."

FLORIDA PUBLIC SERVICE COMMISSION REPORTER (FPSC)

57

SHEET TWO

RATES

The utility is currently charging and should continue to charge the following rates:

WATER - Monthly Rates

General, Residential, and Multi-Residential Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 9.25
1"	23.25
1 1/2"	46.25
2"	74.00
3"	140.00
4"	221.25
6"	442.50

Charge per 1,000 gallons of water use 1.65 per 1,000

SEWER - Monthly Rates

General and Multi-Residential Service

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 10.00
1"	26.00
1 1/2"	52.00
2"	84.00
3"	140.00
4"	208.00
6"	330.00

Charge per 1,000 gallons of water use 1.15 per 1,000

Residential Service

All Meter Sizes	\$ 10.00
Charge per 1,000 gallons of water use	1.15 per 1,000
Maximum	10,000 gallons

SERVICE AVAILABILITY CHARGES

The utility should continue charging the following service availability charges:

WATER - Plant Capacity Charge

\$1,000 per MGD

Meter Installation Charge

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 84.00
1"	175.00

Larger than 1" will be at the utility's cost

SEWER - Plant Capacity Charge

\$1,000 per MGD

Therefore, in consideration of the above, it is

ORDERED by the Florida Public Service Commission that Water Certificate No. 394-W and Sewer Certificate No. 395-S be and is hereby granted to Seafish Point Utility Company, Suite 607,

FLORIDA PUBLIC SERVICE COMMISSION REPORTER (FPSC)

CASE NO. 11673
DOCKET NO. 010277-00
SHEET THREE

Admiralty Building, 4400 PMA Blvd., Palm Beach Gardens, Florida
33410, to allow it to operate a water and sewer system in the area
described in the body of this order. It is further

ORDERED that the utility is authorized to continue with its
present rates and charges as described in the body of this order.
It is further

ORDERED that the utility shall continue its current service
availability policy as described in the body of this order.

By ORDER of the Florida Public Service Commission, this 14th
day of March, 1983.

Steve Zibbe
Steve Zibbe
Commission Clerk

(S E A L)

END

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SAILFISH POINT
UTILITY CORPORATION for certificates
to operate a water and sewer utility
in Martin County, pursuant to Section
167.171, Florida Statutes.

DOCKET NO. 810277-WS (AP)
ORDER NO. 11673-A
ISSUED: 3-11-83

AMENDATORY ORDER

BY THE COMMISSION:

On March 4, 1983, this Commission issued Order No. 11673, granting certificates and setting rates purportedly for Sailfish Point Utility Company. The correct name of the utility is Sailfish Point Utility Corporation. Therefore, any reference in Order No. 11673 to Sailfish Point Utility Company should be changed to read Sailfish Point Utility Corporation.

It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. 11673 be amended to reflect the correct name of the utility, Sailfish Point Utility Corporation. It is further

ORDERED that Order No. 11673 is hereby reaffirmed in all other respects.

By ORDER of the Florida Public Service Commission, this 11th day of March, 1983.

Steve Tristle
STEVE TRISTLE
Commission Clerk

(S E A L)

RRJ

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To <i>Ben</i>	From <i>Frank</i>
Co.	
Dept.	Phone #
Fax #	

DOCUMENT NO.
2119-83

**UTILITY'S BRIEF
REGARDING SPOR'S TESTIMONY AND EXHIBITS
ABOUT THE DECLARATION OF PROTECTIVE COVENANTS
AND OTHER MATTERS**

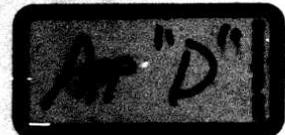
The following argument is incorporated into the Brief in accordance with the agreement reached at the hearing pursuant to SPOR's motion to strike the Second Additional Testimony and Exhibits of Witness Seidman. (Tr. 208-12).

The argument is taken verbatim from the proposed testimony. Pages are numbered 1-12, and paragraphs retain the same numbers as are contained in the original motion from which the proposed testimony was taken.

7. As acknowledged on page 2 of the SPOR letter of April 2, the attorney for the "SPOR representatives" has been representing certain homeowners in what they call "transfer" issues relating to the turn-over of control of certain aspects of the development to the homeowners. The letter of April 2 responding to the Staff Attorney's request of March 27 claims (on page 2) that

. . . The documents also give the Developer the option to convey the Utility Facilities to the POA. One "turn-over" issue is whether conveyance of the Utility Facilities must be free and clear or can the Developer demand fair market value? [Emphasis supplied.]

8. Therefore, if there is a dispute about "turn-over issues", the proper forum for these individuals is in the Circuit Court, not the Florida Public Service Commission. The Public Service Commission has no jurisdiction or responsibility for the numerous "turn-over" issues relating to a development. That jurisdiction is with the Circuit Court. And in this case, there is no requirement whatsoever in any document anywhere that the



Developer must convey the Utility, in whole or in part, to the "SPOR representatives" or to the property owners association (POA).

9. On two prior occasions the Public Service Commission has seen fit to grant certificates of public convenience and necessity to Sailfish Point Utility Corporation. In Docket Nos. 790904-W and 790905-S, water and sewer certificates were granted to the Utility when the Commission first obtained jurisdiction from Martin County. Subsequently, the County took back jurisdiction for a short period of time, and then in Docket No. 810277-WS, the Commission again granted water and sewer certificates to the Utility after Martin County gave up jurisdiction for the second time.

* * *

12. The interests which the "SPOR representatives" seek to inject into this proceeding are: 1) How to acquire the Utility (if they can convince the Developer to convey it to them or to the POA), and 2) Under what terms and conditions might the Utility be acquired. There is no requirement, of any kind, in law, in contract, or otherwise, which would compel the Developer ever to convey the Utility to the POA, and certainly not to the "SPOR representatives".

13. On March 29, 1991, the "SPOR representatives" filed a Response to the Utility's objection to their petition for leave to intervene. Their response is a classic example of obfuscation. It stretches the English language past the breaking point, not to mention the credibility of the petitioners. In their effort to acquire the Utility system (if they can convince the Developer to

convey it to them), the petitioners have made repeated misrepresentations of the facts set forth in written documents, particularly the Declaration of Covenants and Restrictions for Sailfish Point, a copy of which is attached hereto as Exhibit C. A few, but not all, of the misstatements will be addressed here, especially as they relate to the Declaration of Covenants and Restrictions for Sailfish Point as made on January 25, 1980. (Although eight (8) amendments have been made to the original Declaration, there were no substantive changes in any of the sections cited herein. However, for reference, there were slight wording changes in the following: Article I, Section 29 in the First Amendment at page 2; Article III, Sections 7(d) and (e) in the First Amendment at pages 2-3; Article VII, Section 9 in the First Amendment at pages 8-9; Article XVI, Section 3 in the Fourth Amendment at page 3. Copies of those amended sections are attached hereto as Exhibit D.)

14. In Article I, Section 6, on page 2, the Declaration defines "Common Areas" to include any portion of the real or personal property within the boundaries of the development, Sailfish Point,

. . . title to which is not held by the Developer, the Owner of a Residential Unit or Parcel, the Golf Club, the Marina Owner, or Sailfish Point Utility Corporation
. . . . [Emphasis supplied.]

The real and personal property of the Utility is specifically exempt from the definition of Common Areas. (See also the identification of "Sailfish Point Property" in Section 26, page 4,

and in the Exhibit A attached to the Declaration.)

Therefore, the insinuation that lines and mains which are placed in Common Areas somehow must be, or have been, conveyed to the POA or to any residents or customer group is spurious and without merit.

15. Article I, Section 27 on page 4 states that "Sailfish Point Utility Corporation"

. . . shall mean and refer to the entity, in whatever legal form, which owns and/or operates and/or manages the water and/or waste water treatment facilities which serve the Owners, the Golf Club, the Marina Owner, the Developer and all other uses of the Sailfish Point Property excluding the irrigation system which serves the Golf Club Facilities and Golf Course and the irrigation system which serves all Owners, the Developer, the Marina Owner, and all other users of the Sailfish Point Property. [Emphasis supplied.]

Therefore, only those irrigation systems specified in that section are exempt from Utility ownership, not the lines, mains, pumps or any other equipment or Utility property.

16. Article I, Section 29 on page 4 defines "Utility Parcel" to mean and refer to

. . . all or any part of Parcel "C" of Plat No. 1 of Sailfish Point to be recorded concurrently with this Declaration and shall include where the context so requires, all improvements thereon and appurtenances thereto.

"Utility Parcel" defines a part of the total Utility assets and is a convenient phrase to identify the land which, essentially, contains the plant and improvements thereon. Merely defining the real estate and the plant for convenience of reference in no way excludes the mains and lines and the other assets of the Utility from being owned, used and maintained by the Utility.

17. In Article III, Section 7(a) on page 6, easements are specifically reserved for all utilities

. . . including but not limited to, electricity, telephone, water and wastewater services . . . for [the described users of utility services at Sailfish Point] . . . or as may be required for utility services, including the maintenance and operation of wells, well sites and a system for drainage, irrigation and effluent areas in order to adequately serve all or any part of the Sailfish Point Property, and all improvements thereon. [Emphasis supplied.]

The introductory portion of this Section 7 provides that each of the easements described therein were

. . . reserved and otherwise created and conveyed in favor of the Association, all Members, all Builders, the Developer, Sailfish Point Utility Corporation, the Golf Club and its members, the Marina . . . and assigns . . . [Emphasis supplied.]

18. Therefore, the Utility is clearly described as owning the utility easements.

19. Conversely, in addition to reserving utility easements throughout Sailfish Point, the Declaration [Article III, Section 7(d) at page 6] reserves easements for exterior maintenance and repair over all property at Sailfish Point, including the Utility Parcel. (See also Article VIII, Section 11, page 18). Article III, Section 7(e), page 6 also conversely reserves an easement for ingress and egress from and to each lot and the named parcels, including the Utility Parcel. Therefore, easements and access are reserved through the Common Areas for the Utility to install, operate and maintain its mains and lines, and easements and access are conversely reserved for the POA to carry out its responsibilities, such as exterior maintenance, if required, as to

each lot and the named parcels, including the Utility Parcel.

20. Article VII, beginning on page 15, sets forth the duties of various entities, including maintenance duties. Section 5 on page 17 deals with the Utility Parcel where the plant is located, and it is the Utility's responsibility to maintain that parcel. (But that is not the only maintenance duty of the Utility.)

21. Section 9 on page 17 provides that the Association will have, in effect, what is a permissive "secondary" authority to ". . . provide exterior maintenance service . . ." of areas such as the Golf Club, any residential unit, any parcel of land, the Golf Course, the Marina and Marina Facilities, and even the Utility Parcel, if the responsible entity does not provide that exterior maintenance. [Emphasis supplied.]

The type of authorized maintenance by the Association includes:

. . . paint; repair; roof repair and replacement; installation of gutters, down spouts and exterior building surfaces; yard clean-up; maintenance of the Golf Course; bulkheading; dredging, and otherwise maintaining the Marina and Marina Facilities . . . maintenance to the landscaping, sprinklers, trees, shrubs, grass, pools, walks, private drives, shorelines and streets, Owner's irrigation systems, and may provide maintenance to other exterior improvements. . . .

There is no authority, whether primary, secondary, or otherwise for the POA to maintain utility mains, lines or any other property used in providing water or wastewater service. Furthermore, the POA's "secondary" authority is limited to "exterior maintenance" which does not contemplate ownership or maintenance of buried utility pipes.

22. Section 9 (page 17) also specifically states that, even as to exterior maintenance:

To the extent such maintenance is provided in a satisfactory manner by a Condominium Association or a Cluster Committee, the Golf Club, the Marina Owner, an Owner, Sailfish Point Utility Corporation, or by the Developer for any part of Sailfish Point, such maintenance shall not be duplicated by the Association. [Emphasis supplied.]

23. Furthermore, Section 9 (page 17) states that

The provision of any exterior maintenance services by the Association to . . . [several specifically named facilities including the Utility Parcel (plant location), but not including any utility assets, lines or facilities] . . . shall not be deemed to constitute and does not constitute an acceptance of the ongoing responsibility to maintain such properties or the ownership of such properties. [Emphasis supplied.]

24. And, if the association does render exterior maintenance services, a separate assessment will be made against the entity primarily responsible for the maintenance, including Sailfish Point Utility Corporation. To date, and at no expense to the POA (or to the "SPOR representatives") the Utility has provided all maintenance, for all of the lines, mains, plant, equipment, and other assets used by the Utility in providing water and wastewater services. The Association has never been required to provide such maintenance, and no claim or assessment has ever been made against the Utility for any such "secondary", permissive maintenance.

Several years ago, the Utility paid the POA to mow the grass and for similar grounds maintenance at the Utility Parcel, as well as for some building upkeep and cleaning. Currently, the POA has one person perform maintenance on its own irrigation system serving the Common Areas and individual lots. At the request of the POA,

that person works under utility supervision but is paid by the POA. The POA also pays the Utility for any parts used for their irrigation system. On occasion, the Utility maintenance man, (Marty), will assist the POA maintenance man (Pat) on the work required on the POA irrigation system. Because some of this type of maintenance work requires two people, there is a trade-off between Pat and Marty on work which Pat sometimes does on the Utility, but this is done in the interest of economy and safety and to minimize the cost of maintenance. Therefore, any work done involving the POA has been done, and is currently being done, strictly on a "quid-pro-quo" basis. Any such "maintenance" done "by" the POA has been, and is, fully compensated by the Utility. If it had not been, the POA's remedy would have been in the Courts of Martin County, not the Public Service Commission. (For general information, the Utility has only two other employees, one who manages and supervises the system and performs some maintenance, and the other who essentially performs quality control and lab work.)

25. The POA does not now have, nor has it ever had, the responsibility for maintaining water or wastewater mains, lines, pumps, meters, equipment or any other property used to provide water or wastewater services to the Utility customers. The POA, and certainly the "SPOR representatives", are not authorized to perform work on mains, lines, pumps, meters, equipment or any other property used in providing water or wastewater services, because the POA is only authorized to perform "exterior maintenance" and

then only if the entity primarily responsible for the exterior maintenance fails to do so. This is a common provision for developments so as to preserve the outward appearance of the community if a responsible entity fails to perform its "exterior maintenance" responsibilities.

26. Furthermore, the mere listing of certain duties in Article VII is not intended to cover, and could not be expected to cover, every item of required responsibility, such as maintaining the mains and lines. Such maintenance is only one of the "duties" implicit in owning and operating the water and wastewater systems.

27. Duties of the association include certain maintenance responsibilities in common areas " . . . including the Country Club and the irrigation system for the Common Areas" "Irrigation systems" should not be confused with regular utility mains and lines. "Irrigation systems" do not include potable water distribution systems or wastewater collection systems, especially when the irrigation systems carry treated wastewater for irrigation.

28. Article VIII, Section 4 on page 19 provides that:

Except for Sailfish Point Utility Corporation, the Golf Club, Marina Owner or the Developer, no Owner shall be permitted to develop or establish any septic tanks, sewer, or water supply systems or wells All Owners, the Golf Club, the Marina Owner, Sailfish Point Utility Corporation, and the Developer shall pay the "tap-in" and connection fees as well as monthly service charges as required by Sailfish Point Utility Corporation, the Association, or the Developer, or whichever entity owns and operates the water and wastewater treatment facilities which serve all Owners and users of the Sailfish Point Property. [Emphasis supplied.]

29. Section 5 on page 19 provides that:

The Golf Club and the Association each may own and operate separate irrigation systems for the property owned by each. Each irrigation system is a part of, and must comply with the terms of, the Water Management System.

The Water Management System is defined in Article I, Section 30 on page 4 and provides that the Water Management System

. . . shall mean and refer to the system described in the Surface Water Management Permit No. 43-00125-S, issued by the South Florida Water Management District, which encumbers all Sailfish Point Property and which must be maintained by the Association, as from time to time amended with approval of the South Florida Water Management District, or whatever governmental agencies have jurisdiction over a drainage system at Sailfish Point. [Emphasis supplied.]

This is not the water and wastewater system, but rather provides for drainage and surface water management. The POA authority in relation to that drainage requirement does not give them any right, title or interest in any utility property, especially the distribution and collection lines and mains.

30. Article IX, Section 8 on page 21 provides general restrictions relating to the use of the Utility Parcel:

It is hereby declared that the Utility Parcel will be improved and maintained to provide water and wastewater treatment facilities and services to all Owners and users of the Sailfish Point Property.

Section 6 on page 21 provides general restrictions relating to the use of Common Areas:

It is hereby declared that the Common Areas shall be used exclusively for the benefit of the Members, Members of the Golf Club, the Marina Owner and Sailfish Point Utility Corporation. [Emphasis supplied.]

Therefore, the Utility is entitled to use not only the Utility

Parcel, but also the Commons Areas to carry out its responsibilities to provide water and wastewater services to the customers and residents at Sailfish Point.

31. In Article XIII, Section 1 (d) and (e) on page 29, the Developer specifically reserves the right to establish and convey easements in the entire property. It also reserves the right to amend the Declaration of Covenants and Restrictions (Article XVI, Section 3 at page 33) and refers to its right to amend the Planned Unit Development agreement (Article XIII, Section 1(k) at page 30).

32. These foregoing are only a few of the provisions of the Declaration of Protective Covenants and Restrictions for Sailfish Point, but they clearly show that the "SPOR representatives" have deliberately attempted to distort and manipulate the facts and the provisions in the governing documents so that they may, in their efforts to acquire the Utility, try to gain financial advantage totally separate and apart from the issue of setting rates for this utility.

33. The petition for leave to intervene filed by the "SPOR representatives" has nothing to do with the actual rate increase. The "SPOR representatives" are attempting to find someone . . . anyone . . . to interpret the governing documents in a manner which will: 1) limit the Developer's ability to convey the Utility to a third-party water and sewer company, and 2) which will, in their opinion, reduce the "value" of the Utility so that they may have a bargaining edge in their efforts to acquire the Utility.

34. Therefore, this is a sham pleading and it should be

stricken.

35. As further indication of the distortions in the SPOR pleadings, the Utility clearly holds title to the Utility assets. The Utility Parcel and the Effluent Tank Parcel, together with all easements and appurtenances to both these parcels and " . . . all mains, lines, meters, pumps, and equipment appurtenant thereto which are located off the Lands [Lands being, collectively, the Utility Parcel and the Effluent Tank Parcel] but within Sailfish Point . . . " were conveyed in December, 1983, from Sailfish Point, Inc. to Sailfish Point Utility Corporation, as shown by that Special Warranty Deed attached hereto as Exhibit E. [Emphasis supplied.] The Utility property also was made subject to the Mortgage and Security Agreement made by Sailfish Point Utility Corporation as mortgagor to Sailfish Point, Inc. as mortgagee, as shown by that Mortgage and Security Agreement attached hereto as Exhibit F. Article I on pages 2 and 3 of the mortgage (Section 1.04) also covers, among other things, the water and sewer mains and lines located off the Utility Parcel and off the Effluent Tank Parcel.

* * *

38. If the "SPOR representatives" have an issue to negotiate, let them present it to whomever they wish to negotiate. If there is a legal dispute let them file suit in Circuit Court. But the attempt to use the time, energies and cost of everyone involved in this proceeding outside the Public Service Commission's jurisdiction is an abuse of the legal process.

1 Q. Does it identify the issues in the prehearing order
2 to which the documents are supposed to be
3 applicable?

4 A. No, it does not identify any issues relevant to
5 this proceeding and it does not tie any document to
6 any issue previously identified at either the
7 preliminary prehearing conference or the prehearing
8 conference.

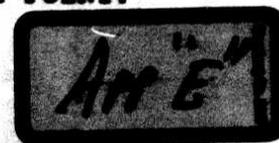
9
10 Q. Since Mr. Rasmussen's Addendum does not identify any
11 issues which his exhibit is related to, and does
12 not tie any parts of his exhibit to relevant
13 issues, how can you respond to the information in
14 the exhibit?

15 A. I can not. It is simply impossible to determine
16 what passages may be intended to relate to any
17 issue. On that basis, I cannot respond.

18
19 Q. In regard to Mr. Rasmussen's prefilled testimony,
20 what is important for the Commission to consider in
21 this utility rate proceeding?

22 A. I can summarize these matters of concern, as I
23 understand them, as follows:

24 1. IS SPUC AUTHORIZED TO PROVIDE WATER AND
25 WASTEWATER SERVICE TO SAILFISH POINT?



1 **Yes. SPUC is a regulated utility under the**
2 **jurisdiction of this Commission. Several**
3 **years ago it applied for and received a**
4 **certificate to provide water and wastewater**
5 **service at Sailfish Point. That certificate**
6 **conferred the exclusive right, and**
7 **responsibility, to provide water and**
8 **wastewater utility services at Sailfish Point.**

9
10 **2. IS SPUC AUTHORIZED TO MAINTAIN ALL OF THE**
11 **FACILITIES NECESSARY TO PROVIDE WATER AND**
12 **WASTEWATER SERVICE?**

13 **Yes, as a regulated utility, SPUC is not only**
14 **authorized, it is required to own, operate and**
15 **maintain all of its facilities up to and**
16 **including the point of delivery (Section 25-**
17 **30.225 F.A.C.). The "point of delivery" is**
18 **the meter, for metered service, or the**
19 **customer's piping for nonmetered service.**
20 **(Section 25-30.210(7), F.A.C.)**

21
22 **3. IS SPUC AUTHORIZED TO CHARGE FOR THE COST OF**
23 **OPERATING AND MAINTAINING THE WATER AND**
24 **WASTEWATER SYSTEMS?**

25 **Yes. As a regulated utility, it is entitled**

1 to have rates set by this Commission to
2 recover the associated costs of providing
3 service. (Section 367.081 F.S.)
4

5 4. ARE THE UTILITY FACILITIES A PART OF THE
6 "COMMON AREAS" AND THUS THE RESPONSIBILITY OF
7 THE POA?

8 No. The utility facilities are not part of
9 the "Common Areas". The Common Areas
10 specifically exclude any real or personal
11 property to which title is held by other
12 entities, including Sailfish Point Utility
13 Corporation (SPUC). The plant and the lines,
14 pumps, meters etc. associated with providing
15 water and wastewater service are owned by
16 SPUC. Therefore, the lines, mains, pumps and
17 any other utility facilities that may lie
18 within the common areas, are located there by
19 reason of easements, as are the facilities of
20 the electric, telephone and cable companies
21 that also serve Sailfish Point.
22

23 5. IS THE POA AUTHORIZED TO ASSESS RESIDENTS OF
24 SAILFISH POINT FOR WATER AND WASTEWATER
25 SERVICES?

1 No. The only charges authorized to be made
2 for utility services at Sailfish Point are
3 those approved by this Commission. I do not
4 know if such a charge has ever been made.
5 However, if the POA is charging for such
6 services, through its assessments, as Mr.
7 Rasmussen alleges it has the authority to do,
8 then such charges are duplicative of SPUC's
9 charges, are made without the authority of
10 this Commission, and should be refunded to the
11 customers.

- 12
- 13 Q. Are any of the parts of Mr Rasmussen's exhibits
14 relevant to issues in this proceeding?
- 15 A. No, not in my opinion.

Saffish Point Utility Corporation
 Restatement of Accumulated Deferred Taxes
 Recognizing Tax Benefits at Time Taken

		1981 Additions			1984 Add't'ns Closed			1984 Add't'ns Closed			1985	Per NFR's			Per NFR's		
		Tax Depr			Tax Depr			Tax Depr			Truck	Tax Depr			Tax Depr		
		Plant	Rate	Amount	Plant	Rate	Amount	Plant	Rate	Amount	Tax Depr	Plant	Rate	Amount	Plant	Rate	Amount
1981	1981	2,781,612	5.00%	135,081													
1982	1982		10.00%	270,161													
1983	1983		9.00%	243,145													
1984	1984		8.00%	216,129	845,011	5.00%	43,251	112,846	5.00%	5,682							
1985	1985		7.00%	189,113		10.00%	86,501		10.00%	11,285	337						
1986	1986		7.00%	189,113		9.00%	77,851		9.00%	10,084	737						
1987	1987		6.00%	162,097		8.00%	69,201		8.00%	8,944	737						
1988	1988		6.00%	162,097		7.00%	60,551		7.00%	7,843	737						
1989	1989		6.00%	162,097		6.00%	51,901		6.00%	6,725							
1990	1990		6.00%	162,097		6.00%	51,901		6.00%	6,725		62,951	5.00%	3,148			
1991	1991		6.00%	162,097		6.00%	51,901		6.00%	6,725			10.00%	6,295	1,380,441	5.00%	67,532
1992	1992		6.00%	162,097		6.00%	51,901		6.00%	6,725			9.00%	5,666		10.00%	138,044

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Based on Testimony of F. Seidman (T. 228)
 Exhibit 3, page 1.
 Exhibit 2, Vol. 1, pages 26,27,99.

Note: Since the tax benefits for the 1984 additions were determined retroactively by an adjustment in 1989, the tax rate applied is the current tax rate of 30%.

APP. "B"

APPENDIX "B"
 ACCUMULATED DEFERRED TAX BALANCE

	Per NFR's *		Tax Depr on '81 Plant & '85 Truck				Tax Depr on '84 and NFR			Total Annual Tax		Cum. Balance	Avg Balance
	Plant Rate	Amount	Total Book	Difference	Actual Tax Rate	Annual Tax	Additions	Actual Tax Rate	Annual Tax	Total Annual Tax			
1981			135,081	56,936	78,145	46.00%	35,947	0	34.00%	0	35,947	35,947	
1982			270,161	66,544	203,617	46.00%	93,455	0	34.00%	0	93,455	129,401	
1983			263,145	61,773	181,372	46.00%	83,431	0	34.00%	0	83,431	213,032	
1984			216,129	94,101	122,028	46.00%	56,133	48,853	34.00%	16,640	72,773	285,775	
1985			189,450	90,777	98,673	46.00%	45,390	97,786	34.00%	33,228	78,609	364,385	
1986			189,870	91,438	98,432	46.00%	45,279	87,926	34.00%	29,808	75,177	439,561	
1987			162,854	91,439	71,415	46.00%	28,546	78,188	34.00%	26,576	55,142	494,703	
1988			162,854	91,440	71,414	34.00%	24,281	68,394	34.00%	23,254	47,535	542,238	
1989			162,897	90,367	71,730	34.00%	24,388	58,623	34.00%	19,932	44,320	586,558	
1990			162,897	99,817	63,080	34.00%	21,447	61,771	34.00%	21,082	42,449	629,007	687,782
1991			162,897	138,348	11,749	34.00%	3,995	132,441	34.00%	45,830	49,824	678,831	683,519
1992	296,450	5.00%	14,823	189,978	(27,881)	34.00%	(9,488)	214,156	34.00%	72,813	63,333	741,365	789,688

Sailfish Point Utility Corporation
 Breakdown of Rate Case Expense - 1992 Case

Invoice Date	Hours Billed	Average Hourly Rate	Subtotal- Services	Expenses	Total	Description of Work Performed
Management & Regulatory Consultants, Inc. -				Rate Consultant		
8/90	7.00	85.00	595.00	.00	595.00	Conference; organize for new case
10/90	16.00	82.19	1,315.00	28.14	1,335.14	Review, conference, programming
11/90	126.00	73.85	9,305.00	29.78	9,334.78	WP's
12/90	163.75	77.73	12,728.75	23.17	12,751.92	WP's
1/91	233.25	68.79	16,046.25	1,488.98	17,535.23	WP's
3/91	12.25	55.61	681.25	386.49	1,067.74	Tel. conference re staff inquiry & general rate case matters
4/91	8.50	65.88	560.00	46.87	606.87	Respond to staff audit requests
4/91	25.00	85.00	1,975.00		1,975.00	GPC intervention & discovery
5/91	9.75	85.00	828.75	113.44	942.19	Respond to staff & staff audit; draft protesting petition
5/91	17.50	85.00	1,487.50		1,487.50	GPC intervention & discovery
6/91	92.25	76.32	7,031.25	348.91	7,380.16	Respond to staff discovery; rebuttal testimony
6/91	25.50	85.00	2,167.50		2,167.50	GPC intervention & discovery
thru 6/23	68.75	89.94	6,162.75	478.78	6,641.53	Respond to staff interrogatories; preparing audit; prepare for hearing
thru 6/23	73.50	84.00	6,180.00		6,180.00	GPC & WP's discovery & intervention
					66,358.38	
Dunn, Ryan Associates -				Engineer		
1/91	12.50	56.90	711.25	39.97	751.22	Prefiled testimony and audit with case
4/91	4.00	62.50	250.00	3.40	253.40	Interview discovery
5/91	11.00	54.35	597.85	27.50	625.35	Staff discovery
thru 6/21	11.00	91.59	1,007.50	1.10	1,008.60	Rebuttal testimony, staff & discovery
thru 6/21	6.00	57.50	345.00	5.00	350.00	Rebuttal testimony, GPC
					2,388.72	

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APPENDIX "C"
 RATE CASE EXPENSES
 (Prior to Hearing)

Sailfish Point Utility Corporation
Breakdown of Rate Case Expense - 1992 Case

Invoice Date	Hours Billed	Average Hourly Rate	Subtotal - Services	Expenses	Total	Description of Work Performed
San E. Girsman, Esq - Attorney						
10/90	4.10	110.00	451.00	35.95	486.95	Misc. incl. test yr approval
1/91	7.90	125.00	987.50	58.38	1,045.78	General, petition, file WPR, research
1/91	11.00	125.00	1,375.00	90.64	1,465.64	Notice, testimony, correct WPR, CDR
2/91	16.70	125.00	2,087.50	202.48	2,295.98	Notice, corp. undertaking, hearings, agenda, draft preparing statement
3/91	5.70	125.00	712.50	202.33	915.33	Notice, hearing tariffs, staff conf., misc.
3/91	13.00	125.00	1,625.00	48.11	1,718.11	WPR & WPR intervention & discovery
4/91	6.40	125.00	800.00	28.95	828.95	Hearing billings & reports, staff conf., staff discovery, misc.
4/91	41.70	125.00	5,212.50	814.99	6,027.49	WPR & WPR intervention & discovery

Salfish Point Utility Corporation
Breakdown of Rate Case Expense - 1992 Case

Invoice Date	Hours Billed	Average Hourly Rate	Subtotal- Services	Expenses	Total	Description of Work Performed
Estimate to Complete -						
Rate Consultant	16.00	65.00	650.00		650.00	Prepare for hearing
"	16.00	65.00	650.00		650.00	Prepare for hearing; related to intervention
"	9.50	65.00	607.50	25.00	632.50	Attend hearing
"	9.50	65.00	607.50		607.50	Attend hearing; related to intervention
"	26.00	65.00	1,700.00	475.00	2,175.00	Assist with post hearing activities; including brief
"	26.00	65.00	1,700.00		1,700.00	Assist with post hearing activities; including brief; related to intervenors
Engineer	5.00	57.50	287.50	100.00	387.50	Prepare for hearing
"	16.00	57.50	920.00	100.00	1,020.00	Attend hearing
Attorney	15.00	125.00	1,875.00	100.00	1,975.00	Acquire advice & respond to CPC 3rd discovery
"	15.00	125.00	1,875.00	250.00	2,125.00	Prepare for hearing; site plant & development
"	16.00	125.00	1,200.00	250.00	1,450.00	Prepare for hearing; related to intervention
"	9.50	125.00	1,187.50	250.00	1,437.50	Attend hearing
"	9.50	125.00	1,187.50	250.00	1,437.50	Attend hearing; related to intervention
"	26.00	125.00	2,500.00	150.00	2,650.00	Assist with post hearing activities; including brief
"	25.00	125.00	3,125.00	150.00	3,275.00	Assist with post hearing activities; including brief; related to intervenors
					25,682.50	
Total, actual + estimate to complete					126,451.00	
Total, non-intervenor related					65,900.51	
Total, intervenor related					60,550.49	

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APPENDIX "C"
RATE CASE EXPENSES
(Includes to complete)