

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates )  
 under grandfather rights to provide )  
 water and wastewater service by Sports ) Docket No. 961006-WS  
 Shinko Utility, Inc. d/b/a Grenelefe )  
 Utilities in Polk County. )

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**AMENDED**  
**COUNTER-PETITION FOR FORMAL**  
**ADMINISTRATIVE PROCEEDING**

GRENELEFE ASSOCIATION OF CONDOMINIUM OWNERS NO. 1, INC., ("Association" or "Petitioner"), by and through its undersigned attorneys and pursuant to Chapter 28-106, Florida Administrative Code, files this Counter-Petition for Formal Administrative Proceeding regarding PSC Order No. PSC-97-1546-FOF-WS ("Order") and states:

1. The full name and address of Petitioner is:

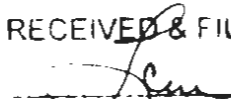
GRENELEFE ASSOCIATION OF CONDOMINIUM OWNERS NO. 1, INC.  
 Post Office Box 7001  
 Grenelefe, Florida 33844

2. The name and address of the person authorized to receive notices and communications in respect to this petition is:

F. Marshall Deterding, Esquire  
 Rose, Sundstrom & Bentley  
 2548 Blairstone Pines Drive  
 Tallahassee, Florida 32301

3. The Association's substantial interests are affected by the Order in that it establishes for the first time a rate for non-potable irrigation service which will be imposed on the Association.

ACK \_\_\_\_\_  
 AFA \_\_\_\_\_  
 APP \_\_\_\_\_  
 CAF \_\_\_\_\_  
 CMU \_\_\_\_\_  
 CTR \_\_\_\_\_  
 EAG \_\_\_\_\_  
 LEG 1 \_\_\_\_\_  
 LIT 3 \_\_\_\_\_  
 OTH \_\_\_\_\_  
 REC \_\_\_\_\_  
 SEC \_\_\_\_\_  
 WAS Golden \_\_\_\_\_  
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4. The disputed issues of material fact are:

(1) Whether Grenelefe Utility ("Utility") had an approved non-potable irrigation rate when Polk County transferred jurisdiction of water and wastewater utilities in that County to the Commission.

(2) Whether the Utility's implementation of a non-potable irrigation rate constitutes a willful violation of Chapter 367, Florida Statutes.

5. The ultimate facts are as follows:

(1) At the time Polk County transferred jurisdiction over water and wastewater systems in the County, the Utility had no approved rate for non-potable irrigation service.

(2) The revenue requirement established by Polk County in the Utility's most recent rate order includes a rate of return on the non-potable irrigation facilities; and for the operating and maintenance expenses of those facilities. Thus, the establishment of a rate for non-potable irrigation service without a reduction in the Utility's water rates for potable water service would result in a windfall to the Utility and put it in an overearnings position.

(3) Even though The Utility implemented a non-potable irrigation rate knowing that such rate was not authorized, which constitutes a willful violation of the provision of Chapter 367, Florida Statutes, it would not be in the best interest of the Grenelefe Community as a whole to impose any penalty upon the Utility for the imposition of a non-potable irrigation rate without authorization.

(4) It is beyond the scope of the Commission's grandfather certification process to set a non-potable irrigation rate for the Utility.


6. The following Commission Rules and Statutes entitle the Association to relief:

- (1) Section 367.171, Florida Statutes
- (2) Section 367.161, Florida Statutes
- (3) Rule 25-30.035, Florida Administrative Code

WHEREFORE, the Association requests that the Commission hold a formal administrative hearing and to thereafter decline to establish a non-potable irrigation rate, require a refund with interest of all revenue collected by imposition of the non-potable irrigation rate, and grant the Association such other relief as it just and reasonable.

Respectfully submitted on this  
20th day of February, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
(850) 877-6555

BY:   
MARTIN S. FRIEDMAN

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Counter-Petition for Formal Administrative Proceeding has been forwarded via U.S. Mail to W. Bruce DelValle, Esquire, Foley & Lardner, 111 North Orange Avenue, Suite 1800, Orlando, Florida 32802-2193 and Bobbie Reyes, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 this 20th day of February, 1998.

  
MARTIN S. FRIEDMAN