

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 ) May 24, 1991

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UTILITY'S MOTION IN LIMINE  
TO STRIKE CERTAIN TESTIMONY AND EXHIBITS OF  
WITNESS ROGER W. RASMUSEN

COMES NOW, Sailfish Point Utility Corporation, Petitioner for rate increase in the above styled proceeding, and moves for an Order striking certain testimony and exhibits of SPOR witness Roger W. Rasmusen, and as grounds for the motion states that:

1. The filing of the testimony and exhibits is contrary to the requirements of Order No. 24486 issued May 9, 1991 granting the SPOR Petition for Leave to Intervene. That Order specifically states that:

. . . 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. . . . [at page 3]

\* \* \*

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. [at page 4]

2. The testimony and exhibits are not within the bounds of matters required for the Commission to decide the current rate proceeding. Although SPOR has been found to be a proper party to this proceeding, the scope of the proceeding and the jurisdiction of the Public Service Commission do not reach to the matters sought to be raised by SPOR, and the remedy sought by SPOR is beyond the power of the Public Service Commission to grant.

3. Witness Rasmusen has identified a few pages of the exhibits and has commented upon some of them in his prepared testimony. However, the testimony lacks the specificity of reference to documents and the development of the reason why the documents are attached to the testimony in the first place. There has been an inadequate explication in the testimony as to what these exhibits are supposed to prove. Mr. Rasmusen merely makes a broad, sweeping, conclusory allegation, and a statement of his "impressions", but does not tie the remainder of the exhibits to the testimony.

4. The witness has filed what has been represented to be "1,000 pages of exhibits" in support of his testimony. He then expresses a theory of his "impressions" (page 4, line 21), and his "conclusion" that the Utility facilities would be contributed by the Developer as part of the development of Sailfish Point (page 7, line 15). He then states that there is nothing in the 1,000 pages

of exhibits that is "inconsistent" with his conclusion. (Page 7, lines 15-20.)

Webster's Dictionary itself is not "inconsistent" with his conclusion. However, neither Webster's Dictionary nor the 1,000 pages of exhibits provides any positive evidence affirmatively proving any fact or issue necessary for determination by this Commission in the current proceeding.

It is not incumbent upon any party to a proceeding to be compelled to read 1,000 pages of exhibits and guess the portion thereof upon which a proponent of the exhibit may rely in meeting his duty to present affirmative evidence in support of his contentions.

Witness Rasmusen clearly attempts to rely upon the entire set of exhibits, and once at hearing, wax eloquent on what is not "inconsistent" with his theories. The entire testimony and set of exhibits is filed mostly to show what is "not inconsistent" with his impressions, hunches, hopes, beliefs or concerns.

5. The specificity, accuracy and credibility of the prepared testimony does not rise to the standard required for these proceedings. For example:

a. The SPOR witness (Rasmusen testimony, pages 12-14) suggests that because water and wastewater lines and mains lie in common areas, that those lines and mains belong to the homeowners association. However, in addition to the Utility lines and mains, lines for Florida Power & Light Company, the local cable company, and Southern Bell are all located in easements within or adjacent

to common areas and roadways. Those entities would be quite surprised to learn that the POA may also claim ownership of those lines by virtue of their location in common areas. Like these other utility lines, SPUC's lines and mains are located within easements in the common areas.

b. The SPOR witness (Rasmusen testimony, pages 15-19) cites a 1985 public offering statement in Pennsylvania which purports to assign to the homeowner's association responsibility for maintenance of certain water distribution lines and wastewater collection mains. Even if the assertion were correct that the POA was charged with responsibility for seeing that the lines and mains were maintained, such responsibility does not convey ownership. Furthermore, this would not be the only non-POA property with which the POA would have been responsible for seeing that maintenance was performed. For example, the POA currently must maintain the berms and swales adjacent to the man-made harbor, even though the berms and swales are part of the upland owner's lot, and are not intended to become POA property at turnover or at any other time.

c. The SPOR witness (Rasmusen testimony, pages 8-9) claims that the plan to have the developer (Sailfish Point, Inc.) fund, and give an assurance bond for the completion of certain improvements, somehow compelled the developer to give the utility assets to the POA. To the contrary, bonding of improvements is a common requirement of Martin County, just as it is all over the nation. In Martin County, for example, even builders of private residences must post bonds. This in no way demonstrates an intent

that the "development scheme" required the developer to provide the utility facilities at its own cost.

d. The SPOR witness (Rasmusen testimony, pages 11-12) suggests that the lack of inclusion of certain information in a plat implies ownership by the POA or a duty to convey certain assets to the POA. However, it would have been impossible for Sailfish Point, Inc. to have platted the location of the lines at the same time the Utility Parcel (Plat 1A) was platted, because at that time the location of roads and other common areas was uncertain and subject to change. This is normal for any development in its early stages. In addition, it would be impracticable to plat such a narrow strip of land. Furthermore, the law on conveyances in Florida requires more formality and certainty than that in the conveyancing process.

e. The exhibits offered by Mr. Rasmusen are zoning agreements between the developer and the County or agreements between the developer and the property owners. These agreements are non-jurisdictional to this Commission. They do not bind the Commission nor do they provide any information " . . . designed to foster [the Commission's] pursuit for a determination of rates . . . ." [Commission Order No. 24486, page 3, quoted in paragraph 1 above.]

f. These are but a few of the examples of the lack of credibility and reliability of this prefiled testimony. Although Utility Petitioner is specifically seeking to avoid the increased rate case expense associated with having to try a Circuit Court

case before the Florida Public Service Commission, if compelled to do so, the Utility will address more fully these and the other "inaccuracies" in the information presented by the SPOR witness.

6. The witness, Roger W. Rasmusen, sets forth his qualifications on pages 2 and 3 of his prepared testimony. Although he seeks to express an expert opinion about matters in this proceeding, he is not qualified as an expert on water and sewer utility accounting under the Florida Statutes and rules governing the requirement of qualifications of expert witnesses to render opinions. Nor is he qualified as an expert on real property, nor is he a real estate salesman or broker, nor is he an expert on the conveyancing of real or personal property in Florida or elsewhere, nor is he an expert on planned unit developments in Florida or elsewhere. The only expertise offered by the witness is in the general area of capitalization structure and return on investment. However, the witness has not filed testimony on either of these subjects. Instead he seeks to express an expert opinion in this proceeding about matters which are beyond the expertise admitted by the witness and are irrelevant to the proceeding. If he is accepted as an expert witness on matters about which he may, conceivably, be qualified to testify as an expert, his testimony is limited to matters which are outside the jurisdiction of this Commission. Therefore, this witness must be limited to testifying about facts and not opinions. He must be limited to those subjects which any other, non-expert customer is limited to testifying in this proceeding. And, he must be precluded from trying to raise

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matters outside the jurisdiction of this Commission and not within the bounds of matters required for the Commission to decide the current rate proceeding.

7. As further indication of the lack of relevance to this proceeding and the effort by the SPOR representatives to raise matters outside the jurisdiction of this Commission, the Utility specifically adopts and incorporates (as though set forth verbatim herein) the March 21, 1991 Utility Objection to Petition for Leave to Intervene by Sailfish Point Property Owners Representatives and Charles R. Buckridge, and furthermore similarly adopts the April 9, 1991 Utility's Motion to Strike Response of Sailfish Point Property Owners Representatives and Charles R. Buckridge to Utility Objection to Petition for Leave to Intervene. Those documents set forth more information on the inappropriateness of the effort by SPOR to raise issues outside the jurisdiction of this Commission and which are neither necessary nor appropriate for this Commission to consider in order for it to fully exercise its authority, its jurisdiction and its responsibilities under Florida law.

8. Furthermore, the SPOR witness totally ignores that in December, 1983, the total utility assets, including the plant, Utility Parcel, Effluent Tank Parcel and the lines, mains, pumps and equipment located off the Utility Parcel and off the Effluent Tank Parcel, were conveyed by Special Warranty Deed to Sailfish Point Utility Corporation. See Exhibit E and paragraph 35 in the Utility's Motion to Strike dated April 9, 1991 incorporated herein by paragraph 7 above. All actions taken before and since that



conveyance are consistent with the ownership of all of the utility assets by Sailfish Point Utility Corporation, including but not limited to the mains and lines. The conveyance also was memorialized by a Mortgage and Security Agreement in December, 1983, recorded on December 30, 1983, in the Public Records of Martin County, Florida, making all the utility assets subject to the mortgage. See Exhibit F and paragraph 35 in the Utility's Motion to Strike dated April 9, 1991 incorporated herein by paragraph 7 above.

WHEREFORE, the Utility moves to strike the following portions of the testimony of Roger W. Rasmusen: page 4, line 19 through page 23, line 8. Furthermore, the following exhibits of witness Roger W. Rasmusen should be stricken: RWR-1; RWR-2, Volumes 1-3; RWR-3; and RWR-4.

Respectfully submitted this 24th day of May, 1991.



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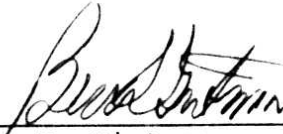
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Attorney for  
Sailfish Point Utility Corporation

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 U.S. Mail, this 24th day of May, 1991.

\* Served by facsimile



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Ben E. Girtman