

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

IN RE: Application of SAILFISH)
POINT UTILITY CORPORATION for)
a rate increase in Martin County)
_____)

Docket No.: 900816-WS
Submitted
for Filing: May 31, 1991

RESPONSE OF INTERVENORS SAILFISH POINT PROPERTY OWNERS REPRESENTATIVE AND CHARLES R. BUCKRIDGE TO UTILITY'S MOTION TO COMPEL RE: ITS FIRST REQUEST FOR PRODUCTION

The Utility's Motion to Compel is based upon the alleged failure of the Intervenor to comply with that portion of the Utility's Request for Production which states:

"In Request 1, 2, and 3 below, Intervenor is specifically requested to identify the page, paragraph, and sentence of any document or thing, and the portion of any chart, graph, or other representation in any document or thing, which the Intervenor relies upon and/or claims to be relevant to this proceeding..."

The Request for Production contained three requests numbered 1, 2, and 3. Respectively, they seek all documents or things "...you intend to seek to introduce in evidence..."; "... you rely upon now, or which you may seek to rely upon at hearing..."; and "... referenced in, or filed with, the Intervenor's pre-filed testimony due May 10, 1991".

The Intervenor's Response to the Utility's Request for Production was served on May 25th and pointed out that all documents in the three categories requested were previously furnished to counsel as exhibits to the pre-filed testimony of Roger W. Rasmusen.

That Response is attached to Utility's Motion to Compel. The last paragraph of that Response states that the Intervenor knows of no proceeding under the discovery rules concerning production of documents which requires such specificity and that the pre-filed testimony of Roger W. Rasmussen cites the documents and provisions which form the basis for the conclusions expressed in his testimony. That Response goes on to state that each page and provision of the recorded PUD Zoning Agreement and its Amendments and of the recorded Declaration of Covenants and Restrictions and its Amendments, as well as all other recorded documents referenced in the pre-filed testimony is relevant to that testimony in support of the conclusions and opinions expressed in that testimony.

Notwithstanding the explanation by the Intervenors of why they were not complying with the Utility's Request for Specificity, the Utility has sought to compel the Intervenors to conform with the unilateral demands of the Utility's counsel to provide such specificity.

Discovery in this proceeding is obtained through the means and in the manner provided in the Florida Rules of Civil Procedure, ("Order Number: 24136 issued 2/19/91 in this proceeding.) Utility does not state in its Request for Production the Rule of Civil Procedure upon which it bases its Request. Rule 1.230, Florida Rules of Civil Procedure, governs production of documents and things. Subparagraph (a) of that Rule allows a request to be made to another party to inspect and copy any designated documents that are within the scope of discovery and are in the possession,

custody or control of the party to whom the Request is directed. Paragraph (b) of that Rule states that the Request shall set forth the items to be inspected and describe each item and category with reasonable particularity. The party to whom the Request is directed shall serve a written Response which, as to each item or category, shall state that inspection and related activities will be permitted as requested, unless objected to, in which event the reasons for the objection shall be stated. The Rule goes on to provide that the producing party shall either produce the requested documents as they are kept in the usual course of business or shall identify them to correspond with the categories in the Request. The producing party has no further obligation.

There is no procedure in Rule 1.350, or in any of the other rules of civil procedure of which the Intervenors are aware, which permits the requesting party to impose upon the party to whom the Request is directed, the obligation, not only to produce the requested documents, but to abstract those documents for the benefit of the requesting party.

Before this commission should grant the Motion it should require the moving party to cite the authority which imposes upon the Intervenors the obligation to perform the acts which the utility seeks to compel. The Rules require the party to whom the Request is directed to do only one thing - produce documents. The Utility wants this Commission to require the Intervenors to do more than is required of them by the Rules. For that reason alone, the Motion should be denied.

The pre-filed testimony of Mr. Rasmussen cites the particular document which is in his opinion contains information that relates to the issues about which he testifies. His testimony about the Declaration of Covenants and Restrictions, cites each article and paragraph which he deems to be pertinent to the conclusions stated in his testimony. Moreover, each of the documents contained in the exhibits to the testimony of Rasmussen was prepared by the lawyers for the developer-controlled utility, who certainly are available to assist Utility's counsel to determine whether the documents may contain provisions which would contradict the conclusions reached by the witness or would justify different conclusions.

The fact that there are so many pages to the documents which affect the ownership rights and maintenance responsibility of the Utility within Sailfish Point is not the fault of the Intervenor. The Developer chose that mechanism to express and document those rights. Each recorded page of the PUD Zoning Agreement and of the Declaration of Covenants and Restrictions and each Amendment thereto is relevant to the positions sought to be asserted by the Intervenor in these proceedings. The Intervenor has attempted to include as an exhibit to the pre-filed testimony of Rasmussen, every recorded document of which it is aware that affects and expresses the various ownership interests and maintenance responsibilities among the varying entities created by the Developer as a part of its development plan for Sailfish Point. Had Intervenor identified only the specific paragraphs, etc. as the Utility Requests, the Utility no doubt would have had objections that

Intervenors failed to include the entire documents. Because of the issues which the Intervenor seek to raise in these proceedings, the non-existence of provisions in recorded documents of title is equally as relevant as specific provisions of those documents. Therefore, Intervenor relies upon each and every page, article, paragraph and sentence of each of the documents attached as exhibits to the pre-filed testimony of Witness Rasmusen.

CONCLUSION

Utility's Motion to Compel is an attempt to impose upon the Intervenor an obligation and a duty which they do not have under the discovery process. The Intervenor rely upon the entire exhibits to the pre-filed testimony of the witness, Rasmusen. Without those entire documents the basis for his testimony would be incomplete and subject to objection. For these reasons, the Motion to Compel should be denied.

Respectfully submitted this 3/17 day of May, 1991.

ST. JOHN & KING
Attorneys for Petitioners
500 Australian Avenue So.
Suite 600, Clearlake Plaza
West Palm Beach, FL 33401
(407) 655-8994



Wm. Reeves King
Fla. Bar # 747319

CERTIFICATE OF SERVICE
DOCKET NO. 900816-WS

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail, to the following parties on this 31st day of May, 1991.

Ben E. Girtman, Esquire
1020 E. Lafayette Street
Suite 207
Tallahassee, FL 32301
Fax # 904-656-6494

Catherine Bedell, Esquire
Division of Legal Services
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0872

Jack Shreve, Esquire
Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Fax # 904-488-4491

ST. JOHN & KING
Attorneys for Petitioners
500 Australian Avenue So.
Suite 600, Clearlake Plaza
West Palm Beach, FL 33401
(407) 655-8994



Wm. Reeves King
Fla. Bar # 747319