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

BRIEF OF

SAILFISH POINT UTILITY CORPORATION

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PRELIMINARY STATEMENT

The Parties

The Petitioner, Sailfish Point Utility Corporation (referred to herein as SPUC, the Utility, Petitioner, or the Company), is a water and wastewater utility regulated by the Florida Public Service Commission pursuant to Chapter 367, Florida Statutes. Petitioner has requested an interim and permanent rate increase in this proceeding. Petitioner is a wholly owned subsidiary of Sailfish Point, Inc. (SPI), which is the developer of Sailfish Point, the entire service area of the Utility. The developer is a subsidiary of Mobil Land Development (Florida) Corporation, MLD(FL)C, which is a subsidiary of Mobil Corporation.

Intervenors include The Office of Public Counsel (OPC); and the Sailfish Point Property Owners Representatives and Charles R. Buckridge (SPOR).

Although not a party, the Sailfish Point Property Owners and Country Club Association is mentioned herein and may be referred to as the property owners association or the POA.

The Final Hearing

Customer hearings and the final hearing were held June 26-27, 1991 at the Sailfish Point Clubhouse. Exhibit 1 is the proof of publication of the required notice.

The Record

References to the transcript of the final hearing will be by transcript page number. (Tr. 411). References to exhibits will be by exhibit number (Exhibit 2). Appendices will be referred to by letter (Appendix "A").

Regulatory Agencies

The Florida Public Service Commission may be referred to as the Commission or the PSC. The Florida Department of Environmental Regulation may be referred to as DER. United States Environmental Protection Agency may be referred to as EPA.

The Witnesses

The following witnesses presented testimony:

Name	Representing	Subject
Mr. Seidman	Utility	Accounting
Mr. Reese	Utility	Engineering
Mr. Olson	Utility	Taxes
Mr. DeMeza	Office of Public Counsel	Engineering
Mr. DeWard	Office of Public Counsel	Accounting
Mr. Rasmusen	Property Owners Representatives	Property owners
Mr. Thiel	Commission Staff	DER wastewater requirements
Mr. Perez	Commission Staff	DER water requirements

STATEMENT OF THE CASE

On December 28, 1990, Sailfish Point Utility Corporation (SPUC) filed its Petition for Interim and Permanent Rate Increase. It complied with the minimum filing requirements, and December 28, 1990, was set as the official date of filing.

Sailfish Point Utility Corporation is a wholly owned subsidiary of Sailfish Point, Inc., developer of Sailfish Point, an exclusive residential community on the southern end of Hutchinson Island and is located between the Atlantic Ocean and the Indian River in Martin County, Florida. Sailfish Point, Inc. is a subsidiary of Mobil Land Development (Florida) Corporation, MLD(FL)C, which is a subsidiary of Mobil Corporation.

Martin County originally had jurisdiction over the Utility. Pursuant to Section 367.171, Florida Statutes, Martin County transferred to the Florida Public Service Commission its jurisdiction over water and wastewater utilities in that County. Martin County reacquired jurisdiction, but then transferred jurisdiction back to the Public Service Commission. A more detailed statement on these jurisdictional matters, and a statement of the prior ratesetting history of the utility, is attached hereto as Appendix "A".

On October 8, 1990, the Utility filed its letter request for test year approval. By letter dated December 28, 1990,

the Commission approved the projected test period of July 1, 1991 through June 30, 1992, based on a historical period of July 1, 1989 through June 30, 1990. The requested historic period was the most current 12-month period for which information was available. On March 5, 1991, the Commission entered its Order No. 24202 suspending proposed rates and granting an interim rate increase.

Because of the environmental sensitivity of the service area and the planned low intensity of development, the cost of service is higher than for most other utilities.

The average rate base for the projected test year ending June 30, 1992 is $1,609,063 for the water system and $1,422,664 for the wastewater system. (Exhibit 2, Volume I, pages 1 and 2).

The adjusted operating income for the test year, without the requested increase, is a negative $122,270 for the water system and a negative $137,715 for the wastewater system. (Exhibit 2, Volume I, pages 42 and 43).

Based on the information available at the time of filing, the Utility determined that a fair rate of return on Petitioner's equity would be 12.14% and a fair rate of return on Petitioner's rate base would be 9.87%. (Exhibit 2, Volume I, page 109).

An increase in projected test year annual water revenues of $371,755 and annual wastewater revenues of $361,910 is required to produce a fair rate of return (Exhibit 2, Volume

I, pages 42 and 43). (Tr 166).

The revenue requirement is $572,814 for the water system and $477,580 for the wastewater system. (Tr. 183).

Relevant Orders in this proceeding include Order No. 24136 (Prehearing Procedure, issued February 19, 1991); No. 24202 (Suspending Petition and Granting Interim Rate Increase, issued March 5, 1991); No. 24486 (Granting but Limiting SPOR Intervention, issued May 7, 1991); and No. 24682 (Prehearing Order, issued June 19, 1991).

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ISSUES PRESENTED

QUALITY OF SERVICE

ISSUE 1: Is the quality of service provided by the utility system satisfactory?

UTILITY: Yes.

The service area is located on the end of an island between the Atlantic Ocean and the Indian River. It is considered to be in an environmentally sensitive area with little or no water available for conventional water treatment. Portions of the site are surrounded by Class II shellfish harvesting waters. Reverse osmosis (R/O) reject disposal has been a particular disposal problem. Also rules for Wastewater Treatment Plant (WWTP) requirements have recently become much stricter with regard to plant equipment and tankage redundancy. (Tr. 479). Mr. Reese described the water and wastewater systems and operations in detail. (Tr. 480-86.).

The quality of service provided by Sailfish Point Utility Corporation was the subject of testimony by two witnesses called by the Commission Staff.

Mr. William J. Thiel is employed by the Florida Department of Environmental Regulation (DER) with offices in Port St. Lucie, Florida. He is responsible for compliance assurance of domestic wastewater facilities, completing facility inspections, review of monitoring data, and compliance with permit and consent order requirements and time schedules for wastewater systems. (See Tr. 691-694).

As a result of Mr. Thiel's evaluation of the Utility's wastewater system, he testified that the Utility has the required current construction permit to construct a 125,000 GPD expansion. The permit DC 43-150566 was issued February 26, 1991, and will expire August 1, 1991. The Utility is in compliance with this construction permit. The wastewater collection, treatment and disposal facilities are adequate to serve present customers based on permitted capacity, and the treatment and disposal facilities are located in accordance with Section 17-600.400(1)(c)(2), Fla. Admin. Code. (Tr. 692).

The pump stations and lift stations meet DER requirements, and the Utility has adequate staffing of certified operators as required by Chapter 17-602, Fla. Admin. Code. The witness found the overall maintenance of the treatment, collection and disposal facilities to be satisfactory. The Utility is also meeting all applicable technology based effluent limits (TBELS) and water quality based effluent limitations (WQBELS). The Utility meets effluent disposal requirements of Section 17-611 and 17-600.530, Fla. Admin. Code, and following completion of the permitting modifications, the facility will be in compliance with all requirements of the reuse rules for spray irrigation. (Tr. 693).

Mr. Thiel testified that the wastewater collection, treatment and facilities are in compliance with all other

provisions of Title 17, Fla. Admin. Code, not previously mentioned. The Utility has not been the subject of any DER enforcement action within the last two years. (Tr. 694).

In his rebuttal testimony, witness William D. Reese pointed out that the Utility is in substantial compliance with its construction permit, not an operating permit as might be inferred from Mr. Thiel's testimony. It is in compliance with the construction permit because it is carrying out the construction required under the permit. It cannot qualify for an operating permit until the plant modifications now being carried out are completed, and the plant will not fully comply with Chapter 17-600, Fla. Admin. Code, until the construction is completed. The plant would not be in compliance with permitted expansion flow limitations unless the expansion were underway. (Tr. 492).

Another witness called by PSC Staff was Mr. Francisco J. Perez, who also is an employee of DER. His office is in West Palm Beach, Florida, and he coordinates compliance and enforcement activities in the drinking water section. (Tr. 695).

As a result of his evaluation of the Utility's water system, Mr. Perez testified that the Utility has a current construction permit no. WC-43-147796 issued April 8, 1988, for the installation of a calcite contactor which will make the water less corrosive. Work is in progress, but the Utility was not yet in compliance with the permit.

The Utility's water treatment facilities and distribution system are sufficient to serve its present customers, and the Utility maintains the required 20 psi minimum pressure throughout the distribution system. It has an adequate auxiliary power source, and its water wells are located in compliance with Section 17-555.312, Fla. Admin. Code. (Tr. 696).

Mr. Perez testified that the Utility has sufficient certified operators as required by Chapter 17-602, Fla. Admin. Code. The Utility is in compliance with Section 17-555.360, Fla. Admin. Code, requiring a cross-connection control program. Mr. Perez found the overall maintenance of the water treatment plant and distribution lines to be satisfactory. Although water produced by the Utility did not meet State and Federal maximum "contaminate" levels for primary and water quality standards based on the Langelier Index and was outside the pH range, the rebuttal testimony of witness William D. Reese explains what actions have been taken to correct the problem.[1] The Utility monitors the organic contaminants listed in Section 17-550.410, Fla. Admin. Code. Permitting is in progress for the additional treatment of calcium carbonate. (Tr. 697).

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[1] It should be noted that the problem being addressed by the testimony of Mr. Perez corrosivity/stability, not contaminantion by foreign substances. However, the State and Federal standards on corrosivity are found under the section on contaminants. The problem of corrosivity is not unique to this utility system. It is common to all water systems using reverse osmosis (R/O) treatment.

Although one customer complained of chlorine in the water (Tr. 59), Mr. Perez testified that the Utility maintains the required chlorine residual or its equivalent throughout the distribution system, and the water plant and distribution system is in compliance with all other provisions of Title 17, Fla. Admin. Code not previously mentioned. The Utility has not been the subject of any DER enforcement actions within the last two years.

During the historic test period the Utility took steps to fully comply with the State and Federal corrosivity standards. In his rebuttal testimony, Mr. Reese addressed Mr. Perez's statements that the Utility is not meeting the appropriate levels of the Langelier Index and the pH range and that recent chemical analysis of raw and finished water suggested the need for additional treatment with calcium carbonate. Mr. Reese testified that these factors are all related to the corrosivity/stability of finished water from the reverse osmosis (R/O) treatment facility. (Tr. 489).

Mr. Reese testified that the Utility has been issued a permit to take action to correct this situation. First, a calcite contactor has already been added to introduce calcium into the finished water. Tests show that the calcite contactor alone was not sufficiently effective in reducing the Langelier Index. Second, a carbon dioxide feed was added to introduce carbon dioxide into the water prior to entering the calcite contactor. This allows more calcium to be dissolved

in the contactor. (Tr. 489). (This is the same calcite contactor that witness Perez referred to as having a current construction permit.)

Test then showed that the Langelier Index is -0.1 and the pH is 8.5. Both of these measures are within the DER required limits. The Utility is now in the process of formally requesting a release from DER. (Tr. 490).

Mr. Reese testified that virtually every plant that does not blend its R/O water has this same problem to some extent. Other utilities have shown an interest in Sailfish Point Utility Corporation's progressive and inventive efforts to address the problem. As shown by Exhibit 9, DER officials have recognized that meeting the pH standard is secondary to controlling corrosivity. (Tr. 490).

Mr. Reese testified that, with the carbon dioxide feed, the finished water satisfies all standards, although it is close to the allowable limits. He also pointed out that the Langelier standards are not particularly applicable to R/O product water. (Tr. 491).

The water plant was even the subject of favorable comment by an Intervenor witness, Mr. DeMeza. He spoke about the excellent operation of the plant: "This long life of the RO units can be attributed to the excellent operation of the plant particularly the operation of the raw water wells and the prefilter. . . . The disposable cartridges are inspected and replaced at frequent intervals to produce a high [sic]

efficient plant. . . . This history of excellent operation must be considered . . . ." (Tr. 582-83).

Also based upon his visit to the water treatment plant and the wastewater treatment facilities on April 2, 1991, Mr. DeMeza reached the conclusion that "Both the water treatment and wastewater treatment are in excellent condition and very well operated." (Tr. 574).

As to customer billing, one customer complained about receiving their first bill ". . . for what would be 10 times normal usage as our first bill." On cross examination, the witness acknowledged that, when the bill was called to the utility's attention, it was reduced to what would be a normal charge. (Tr. 22-23). Another customer testified that they had no billing problems. (Tr. 37).

Some problems with rust in the water were mentioned. However, a witness testified that his rust problem ended probably last year. (Tr. 33).

Another customer testified that he had no problem with the utility service. (Tr. 15).

There have been some leaks in service lines running off the main on Marina Way, (Tr. 56), but the Utility has responded with repairs by in-house personnel (Tr. 462), and whenever water is to be cut off for non-emergency work, the customers are notified in advance. (Tr. 58). Mr. Seidman testified that the cost of repairs is a pretty small amount because of the small number of repairs that are done in any

one period of time. They are not all done in one year, so there wouldn't be that much expense showing up in any particular year. (Tr. 463). Some of the leaks and problems with lines were found to be due to the irrigation system, which is not part of the utility system, and, in fact, is the responsibility of the POA. (Tr. 283-88). In any event, Exhibit 17, which was entered into evidence over the objection of the Utility (Tr. 630), states that "Much of this tubing has been replaced by utility personnel . . . ."

Mr. Petros, one of the utility's customers, testified regarding a letter dated May 22, 1988, sent by the Utility to all its customers. (Tr. 20). Mr. Reese testified (Tr. 513-14) in regard to the letter (Exhibit 10) and stated that the notice was issued as a part of a mandate from the United States Environmental Protection Agency (EPA). "It came at a time when they were quite concerned about lead in drinking water in general." EPA had required that a similar notice, containing mandatory requirements in terms of language, be sent to Utility customers throughout the United States. (Tr. 513). The letter notes that the concentration of lead at Sailfish Point ". . . is 0.002 parts per million, which is twenty-five (25) times less than the current maximum contaminant level." (Tr. 514). The Utility is well within the lead standards.

Therefore, the quality of service provided by the utility system is satisfactory.

RATE BASE

ISSUE 2: Are contingency payments counted twice in the projected cost of the wastewater treatment plant?

UTILITY: The accepted contractor bid price of $263,090 does not include engineering or contingency costs. The contingency cost is not counted twice in the $315,600 projected cost of the wastewater treatment plant.

Contingency payments are not counted twice in the projected cost of the wastewater treatment plant. The cost of $315,600 is the accepted contractor bid price of $263,090 plus a 20% contingency allowance to cover engineering and overheads. (Exhibit 2, Volume I, page 14).

Therefore, the appropriate projected cost of the wastewater treatment plant addition to be included in rate base is $315,600.

ISSUE 3: Should the cost of the water distribution and wastewater collection lines and mains located on the Sailfish Point Property outside of the Utility Parcel be included in rate base calculations?

UTILITY: Yes. The water distribution and wastewater collection lines and mains are a part of the property owned by the utility and are necessary for the utility to provide service to its customers in accordance with its certificate.

All water and wastewater plant in service, as projected for the average test year ending June 30, 1992, and as set forth in Exhibit 2, MFR Volume I, pages 21 and 23, should be included in the rate base calculations.

The assets representing plant in service are an investment of the utility that have been depreciated and have not been expensed as a cost of sales. (Tr. 221 and Tr. 520). The assets were first capitalized and depreciated in 1981. (Tr. 223). The M-1 portion of the Form 1120 of the federal income tax return were examined by the Utility's regulatory witness (Mr. Seidman, Tr. 221, 222), the Federal Income Tax Compliance Manager for Mobil Corporation in Dallas, Texas (Mr. Olson, Tr. 516-22), and by the OPC attorney (Mr. Reilly) and accounting witness (Mr. DeWard, Tr. 518). All the Utility plant (including mains and lines) was reflected there as a depreciable asset. (Tr. 222). The assets were depreciated properly and the tax treatment was proper. (Tr. 222, 223). The Office of Public Counsel representatives were able to trace the depreciation numbers from the individual tax materials from SPUC and SPI into the consolidated Mobil return and confirmed that those depreciation numbers got into the

final return. (Tr. 518).

Information was also made available to the two OPC representatives to confirm the question of contributions. (Tr. 519). Even the SPOR witness, Mr. Rasmusen, acknowledged in his testimony that viewing the tax returns of the parent corporation would be sufficient for him to determine if the cost to construct the Utility facilities had been expensed or otherwise treated as assets of the parent. (Tr. 660-61.) Mr. Rasmusen holds a degree in economics from Monmouth College and a MBA from Harvard. He is also a CPA. (Tr. 640).

The water plant in service, as set forth in Exhibit 2, Volume I, page 21, includes all source-of-supply plant, pumping plant, treatment plant, transmission and distribution plant, general and intangible plant, that has been placed in service since 1980 to serve the SPUC certificated service area. It also includes additions and/or modifications to the water treatment plant that are due to be completed by June, 1992.

The wastewater plant in service, as set forth in Exhibit 2, Volume I, page 23, includes all collection plant, pumping plant, treatment and disposal plant, general and intangible plant, that has been placed in on the books since 1980 to serve the SPUC certificated service area. It also includes additions and/or modifications to the wastewater treatment plant that are under construction and due to be completed by June, 1992.

Exhibit 2, Volume I, pages 18 and 19 show the annual additions and cumulative cost of the water and wastewater plant in service. Exhibit 2, Volume I, pages 25 and 26 show the annual additions and cumulative amounts of depreciation accumulated on plant in service, for book purposes, beginning in 1981 through the projected test year.

A question was raised at the hearing with regard to a developer's decision to either invest in utility assets and earn a return on them or write those assets off as a cost of goods sold (contribute them). Commissioner Deason asked, "Aren't there times that the Commission has to look past the factual situation and ask why and what if and what's the best scenario, prudency, things of that nature." (Tr. 312). That is a matter which is not within the prerogative of this Commission to consider. If a "prudency" test were to be developed and applied to the developer's decision to invest in and depreciate the utility assets rather than "contribute" them to the customers, then as Mr. Seidman pointed out, ". . . from a utility customer standpoint, it would always be imprudent for a developer to invest in a utility because it always results in higher rates than having [no] basis for rate base." (Tr. 312-13). A "prudency test" is just not applicable to that decision.

A Commission requirement to totally contribute utility plant would result in confiscation of property. Furthermore, to require this of only developer related utilities would

certainly be unconstitutionally discriminatory.

This Commission's statutory jurisdiction is over privately owned utilities -- utilities providing service to the public for compensation. (Section 367.021(12), Florida Statutes). By their very nature, privately owned utilities are the product of private investment. Among other things, this Commission is charged with the responsibility to fix rates that provide ". . . a fair return on the investment of the utility . . . . (Emphasis added. Section 367.081(2)(a), Florida Statutes). The Commission cannot require that either a developer or a utility must "donate" the utility system to the customers.

Commission rules do provide for imputation of contributions, but in very limited circumstances. That action can be taken only "If the amount of CIAC has not been recorded on the utility's books and the utility does not submit competent substantial evidence . . ." as to the amount of actual contributions made. (Rule 25-30.570(1), Fla. Admin. Code). That is not the case in this proceeding. The rate base in this case is net of CIAC. (Tr. 168). In fact, this case filing is adjusted to recognize "previously unbooked" meter installation fees. (Tr. 171). There is no evidence in the record of this proceeding to indicate that the CIAC recorded on the books and adjusted for the test period is not the total CIAC for this utility. All the tax records show conclusively that all the utility assets have been accounted

for as investment and have been depreciated and not contributed or written off as a cost of goods sold. (Tr. 221-23, 516-22). The Utility has been filing annual reports with the Public Service Commission for years, and the assets were shown on the books as being depreciated. (Tr. 222).

Therefore, there is no basis upon which to invoke the Commission imputation rule.

Commission rules also provide guidelines as to the mix of investment and contributions. (Rule 25-30.580, Fla. Admin. Code.) But the purpose of that rule is to set the level of the Service Availability Charge which the utility is authorized to collect from customers. Its purpose is not to require the utility to convert the investment already made by the utility into a utility contribution.

In fact, the utility assets were sold by SPI to SPUC, and not contributed. (Tr. 312). The assets were transferred by sale in 1983, and that was the only transfer, whether by sale or by any other means. Anything added to utility assets after 1983 was added by the Utility itself. (Tr. 350). The transfer was pursuant to a purchase and sale agreement and a deed. (Tr. 351).[2]

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[2] In Order 24486 granting SPOR's intervention and at the Prehearing Conference (June 6, 1991), the Prehearing Officer ruled that the Commission did not have jurisdiction over the ownership of the utility assets and, therefore, the ownership of the utility assets by SPUC (whether mains, lines or otherwise) was not at issue in this proceeding. She reiterated that ruling at the hearing. (Tr. 127, 134-35). In fact, ownership of all the utility assets, including but not limited to plant, pumps, lines and mains, is in the utility: 1) pursuant to the transfer of all existing assets

Mr. Terry Olson testified on behalf of the Utility regarding the tax treatment of the utility assets. (Tr. 516-52). Mr. Olson is Federal Income Tax Compliance Manager for Tax Administration, Dallas, Texas (Tr. 516) and has been employed by Mobil for ten years. (Tr. 529). The group which he supervises " . . . is responsible for preparing and filing Mobil's consolidated tax return and seeing that all of our units are advised of any tax law changes . . ." and for properly reporting the federal income tax information on an annual basis. (Tr. 516). He hosted the visit by the two OPC representatives to Dallas on June 13, 1991. (Tr. 516).

The agreed purpose of the visit was so that OPC's witness could confirm that the depreciation deductions that were taken on the utility assets by Sailfish Point Utility Corporation for the years 1981 through 1989 were, in fact, reported as depreciation on Mobil's consolidated return. In fact, they were provided information back to 1979, before the depreciation began. The data was satisfactorily presented to them to show that the information was included in the tax returns. Upon their departure, when asked if they were satisfied that the deductions had been properly rolled up, they answered in the affirmative. (Tr. 517). The OPC

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from the developer (SPI) to its wholly owned subsidiary utility (SPUC) in 1983 by virtue of the agreement for sale and purchase; special warranty deed; bill of sale; promissory note; mortgage and security agreement; assignment of contracts and permits, and 2) by virtue of the construction of all additional utility assets by the utility itself after 1983.

representatives gave no indication of any negative response or objection to the question.

During the visit, the OPC representatives traced the information from the SPUC and the SPI tax materials (M-1's) into the consolidated Mobil Corporation tax return and confirmed that those depreciation numbers from the SPUC and the SPI tax papers got into the final return. The OPC attorney even selected a time period and added up the various numbers for depreciation, thus reconciling that total to the number in the consolidated return. (Tr. 518)

The information provided to OPC during the visit also included materials which confirm the question on contributions. Mr. Olson wasn't sure whether the OPC representatives actually looked at it, but they received it for review in the separate company workpapers. (Tr 519).

Mr. Olson summarized an affidavit which he had prepared for OPC prior to the Dallas visit (and not in response to any discovery) to help explain the handling of the tax information. He confirmed that those tax adjustment workpapers (M-1's) for SPUC and for SPI provided to OPC in response to prior discovery were filed with the IRS on a timely basis for the years 1979 through 1989. (The 1990 tax return has not yet been compiled.) Every year, the Utility assets were treated as depreciation expense, not as cost of goods sold. (Tr. 520).

Mr. Olson was asked why Mobil treated the utility assets

as depreciable assets versus treating them as a cost of goods sold. He responded that ". . . there were many alternatives looked at in the early [years], probably around the 1980s as some of the records indicate. But from a business point of view, I believe Mobil wanted to maintain the flexibility of either donating them to the POA or selling them to a third party of [to] the County. And the only way to do this was to set them up as a separate business unit. And <u>by doing that, we would have to depreciate the assets</u>." (Tr. 520-521). That purpose is consistent with the reservation of options in both the <u>1980</u> Information statement and the 1985 Public Offering Statement discussed herein. Mr. Olson testified that the utility property was also treated as a separate cost center from the other properties at the development. (Tr. 521).

Mr. Olson further testified that the utility assets were not treated as donated property. In contrast, any time he has seen a donation relating to other businesses, the donor has written those expenses off on their books and no basis was transferred (like it was in this case). (Tr. 521-22).

Mr. Olson has not seen any indication that any of those utility assets were written off as cost of goods sold. (Tr. 520).

As verification, Mr. Olson looked at the SPUC and the SPI work papers and files which start with the book accounting. The assets that are recorded on SPUC's books for those years were depreciated under the tax rules, and they were

depreciated and treated as depreciation expense on the tax returns. They were not in any way, that he could tell, taken as a cost of sales." (Tr. 530).

Although several alternatives were considered in the beginning as to how the utility assets might be treated for tax purposes, those assets were acquired by the Utility by purchase; none of the assets were written off as a cost of good sold. No agreement was ever entered into whereby the developed or the utility would be bound to donate the utility assets to the POA. (Exhibit 13). The developer (SPI) did retain the option, as further discussed herein, to select one from several alternatives, but the resulting election in 1983 did not include conveyance to the POA.

Those alternatives mentioned in Exhibit 3 were not adopted and, in reality, the cost of the utility assets were not part of the lot sales for tax purposes or for book purposes. (Tr. 542). To Mr. Olson's knowledge, Sailfish point is the only subsidiary development that has a utility operation. Therefore, although Mr. Olson did not know of any standard policy of Mobil for treating utility assets, he was convinced that in this case the assets were depreciated and not written off as the cost of goods sold. (Tr. 549).

In response to questions raised by Commissioner Deason on the first day of the hearing, Mr. Olson and other company representatives made diligent efforts to acquire information about the history of the utility. "Unfortunately, those

people (contacted by phone) don't have any more history than I do as far as why something was done one way of the other.) Tr. 550-51). However, Late Filed Exhibit 13 was in response to the question.

The utility plant became operational on January 1, 1981, and a full year's depreciation was recorded for both book and tax purposes. [See Exhibit 13, Attachment 2, Memorandum dated December 7, 1982 to B. Garrison.]

Attachment 1 to Exhibit 13 is a letter dated June 30, 1980 from the Smathers & Thompson law firm to a Mr. Bloomquist. It states the conditions which had to be met before the costs of utility development could be allocated to the basis of property held for sale:

> As we have discussed, the Service takes the position in Rev. Proc. 75-25, 1975-1 C.B. 720, that a developer must meet certain conditions in order to currently allocate to the basis of property held for sale, the cost of estimated future expenditures. These requirements are:
>
> 1. The subdivider be contractually obligated to make the future improvement;
>
> 2. The cost of future improvements are not properly recoverable through depreciation;
>
> 3. The subdivider sign a consent fixing the period of limitations to expire one year after the expiration of the estimated period within which the developer expects to make the improvements, or one year after the expiration of a five year period, whichever is shorter;
>
> 4. The subdivider furnish on a periodic basis certain additional data and information pertaining to the development.
> [Emphasis added.]

Because the cost of future improvements were properly recordable depreciation, and in fact the improvement were depreciated, they could not also be recovered through cost of goods sold.

The other document which is part of Attachment 1 to Exhibit 13 is a memorandum dated July 21, 1982 to R. J. Fletcher regarding the tax treatment for utility assets (which were first placed in service in the 1981 tax year). In it he states:

> I advise that the basis of this plant be excluded from Sailfish's 1981 cost of sales. This is based on my understanding that Mobil does not regard itself as contractually bound to contribute the plant to the Sailfish Point Property Owners' and Country Club Association, Inc.
>
> The plant should therefore be depreciated beginning in 1981, the year it was first placed in service.

Exhibit 13 also contains two other documents responding to inquiry by the Florida Public Service Commission. Both confirm that the capital costs of constructing the plant and the related collection and distribution system were not included in the cost of sales of the developer (SPI) and that there were no plans to recover the utility's capital costs in that manner. (Exhibit 13, Attachment 2; memorandum to P. E. Sklansky dated December 8, 1982 and letter to Ms. Connie McCaskill, (Florida Public Service Commission) dated January 7, 1983.

As for the construction of utility assets, a sample

contract, representative of other construction contracts and contracting procedures used by the Utility, was provided. (Exhibit 8; Tr. 366-67). It shows the contracting procedure which has been followed. The agreement is between SPUC and the contractor. Even so, it makes no difference whether a contract for construction is directly between the utility and the contractor or whether the developer is a go-between to get the contract. The asset still winds up being the utility's asset that they paid for. (Tr. 376).

Because the utility assets were transferred in 1983, some questions were asked about the timing and circumstances of the utility's certification by the Public Service Commission.

Martin County originally had jurisdiction over water and wastewater companies in Martin County and set rates for those companies. Pursuant to Section 367.171, Florida Statutes, the Board of County Commissioners adopted a resolution transferring its jurisdiction in the County to the Florida Public Service Commission. The Commission granted water and sewer certificates (Order No. 9289) and the County reacquired jurisdiction.

SPUC filed the application for another PSC certificate on July 15, 1981. (Commission Order No. 9684 had required all utilities newly under its jurisdiction in Martin County to file an application for a certificate, and SPUC complied.) The Commission found SPUC to be in substantial compliance with Section 367.171, Florida Statutes, and issued Order No. 11673

on March 4, 1983, granting SPUC a certificate and reciting that: "Therefore, . . . we find it appropriate to approve the those rates that were previously approved by this Commission in 1980, prior to this Commission losing jurisdiction in Martin County." (Order No. 11673, page 1). Attached as Appendix "C" are a copy of that order and Order No. 11673-A which corrected the reference to the utility's name from "Company" to "Corporation".) (See also Tr. 464-66 and Appendix "A".)

A few customers testified that they had believed that the utility would be turned over to the customers in "transition" or during the turnover of some other parts of the development to the residents. (Eg., see Tr. 14, 19). Some acknowledged that it ". . . was not documented in the documents . . . ." (For example, see Tr. 14). One testified that he was ". . . under the assumption . . ." that the rates were going to stay pretty level." (Tr. 13). A customer, Mr. Cohen, referred to an Information Statement dated March 25, 1980, (Tr. 23) stating that the average monthly bills for water and for wastewater each were "estimated" then to be $25 per month for a townhouse resident. (Tr. 24). He failed to mention that in the same subsection (b), the approved tariffs included <u>only estimates</u> of the cost of water and wastewater service. He also failed to mention the disclaimer and the caveat in the same subsection, that the rates were subject to regulation by the Florida Public Service Commission, that the estimates were

in 1979 dollars, and that:

> 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. [Exhibit 5, Information Statement, March 25, 1980, page 20, paragraph XII, Subparagraph (b), titled "Hook-Up Charges and Tariffs".]

The Utility's regulatory witness also testified that ". . . I think there is enough caveats in the papers we looked at that indicated that the developer had no control over future rates." (Tr. 460-81).

A customer (Mr. Cohen) also read from the 1980 Information Statement, page 20, subparagraph (c), titled "Ownership of SPUC Assets", which sets forth the developer's options to convey the utility assets to either SPUC, or to the POA, or to Martin County, or to some other government entity. If the developer chose to convey the utility assets to the POA, then and only then would they be at no charge to the POA (with certain other conditions being applicable) if the developer chose to convey the assets to the POA. (See also, Tr. 25).

SPOR's Witness, Mr. Rasmusen, also indicated that he believed he would never have to pay more than $25 for water or for sewer service. (Tr. 644). He also failed to give credence to the fact that the same paragraph states that the tariffs on file with the Public Service Commission are current estimates utility charges, based on 1979 dollars, not taking

into account the effects of inflation and that the paragraph contains the disclaimer quoted above.

Mr. Rasmusen's selective reliance on a few sentences from all the development documents, his distorted interpretation thereof, and his failure to provide direct evidence necessary to prove his assertions, clearly show the SPOR intervention for what it is: an effort by several of the residents first to claim legal title to the utility assets, and when that failed, to attempt to use this proceeding before the Public Service Commission to gain a favorable position in its efforts to acquire the utility as part of the "turnover" of the POA and certain development property to the residents.

Mr. Rasmusen testified about his "impressions" (Tr. 642) and stated that he saw nothing in the development documents which in his opinion was "inconsistent" with his opinion that the utility assets would have to be contributed by the developer to the POA as part of the development costs of Sailfish Point. (Tr. 645). Webster's Dictionary may be the only thing not "inconsistent" with Mr. Rasmusen's "impressions", but the documents he cites himself are totally contrary to that interpretation.

The SPOR witness completely misreads the clear, plain language of the offering statements. In the beginning, the developer (SPI) retained the <u>option</u> to convey the utility assets <u>either</u> to SPUC, <u>or</u> to the POA, <u>or</u> to Martin County, <u>or</u> to some other government entity. <u>If</u> the developer <u>chose</u> to

convey the utility assets to the POA, _then_ and only then would they be at no charge to the POA (with certain other conditions being applicable), but only _if_ the developer _chose_ to convey the assets to the POA. (See Exhibit 5, the 1980 Information Statement, page 20, subparagraph (c), titled "Ownership of SPUC Assets" (See also, Tr. 655).

In 1983 the developer elected the alternative of selling the utility to assets to SPUC. By that election, the other options were _not_ chosen and became moot.

After the sale in 1983, and in a subsequent Public Offering Statement dated May 20, 1985, which was included in SPOR's Exhibit 5 in this proceeding, the developer provided for the possible disposition of the utility stock or its assets _either_ to the POA, _or_ to Martin County, _or_ to some other government entity, _or_ to some other independent third party utility company. Again, _if_ the developer _chose_ to convey the utility assets or the stock in SPUC to the POA, _then_ and only then would they be at no charge to the POA (with certain other conditions being applicable), but only _if_ the developer _chose_ to convey the SPUC stock or the assets to the POA. (See Exhibit 5, the 1985 Public Offering Statement, page 31, paragraph VIII C.1., titled "Water Supply: Central Water System". The same options applied to the wastewater system (See page 33, paragraph VIII E.1., titled "Sewage Disposal Facilities: 1. Central Sewage System". Similar provisions are also contained in the 1989 Information Statement (See also,

Tr. 656-58 for Mr. Rasmusen's misinterpretation of the plain language of the documents.)

Mr. Rasmusen fails to point out that many of the documents which he seeks to rely on in Exhibit 5 specifically recited that Sailfish Point Utility Corporation owns and operates the potable water and wastewater treatment facilities, including the collection and distribution lines and pipes.

Copies of those pages of the two information statements are attached as Appendix "B". See also Tr. 665-73, for the cross examination of Mr. Rasmussen on the options available to the developer. He acknowledged that, pursuant to the 1980 information statement the developer had the right to convey the Utility assets to Sailfish Point Utility Corporation under the first set of alternatives. He also acknowledged that he had heard the testimony that the utility assets were conveyed to Sailfish Utility Corporation in 1983. (Tr. 668).

Mr. Rasmusen testified that "Before I signed the contract for purchase, the Developer's representative insisted that I read all of the documents and, as part of the closing, I was required to sign a statement that I had read all of the documents. I recall that one of the advantages pointed out to me by the sales representative was that the development had its own water and sewage treatment plants." (Emphasis added. Tr. 643).

Mr. Rasmusen apparently applied a very selective

interpretation to the documents. Some of the customers who testified at the service hearing did the same.

Martin County has never required the utility facilities to be donated to the customers, particularly not by the declaration of Protective Covenants.

Mr. Rasmusen tries to find support in the Declaration of Covenants and Restrictions. (Tr. 649-55). However, Mr. Rasmusen again misconstrues the plain meaning of the text of those documents. After discussion of SPOR's motion to strike Mr. Seidman's Second Additional Rebuttal Testimony and exhibits, attorneys for SPOR and for the Utility agreed that, rather than leaving in the material as additional testimony and exhibits, the substance of Mr. Seidman's Second Additional Rebuttal Testimony and exhibits would be argued in the briefs. (Tr. 208-12). Both the wording of the motion sought to be adopted as Mr. Seidman's testimony and the documents would be treated the same. (Tr. 212).

The argument set forth in these documents clarifies and corrects the misstatements and misinterpretations of Mr. Rasmusen's direct testimony, especially as it relates to the Declaration of Protective Covenants and amendments thereto. (For example, see, Tr. 650-55.) Rather than insert those arguments at this point in the Brief, they are attached hereto as Appendix "D" and incorporated herein as part of this Brief.

Mr. Rasmusen (Tr. 636, 638) quoted from the Declaration of Condominium, paragraph 12.2, asserting that the unit owners

of the condominium would have the burden of paying for part of the maintenance of utility lines in common areas, ". . . as incurred by the Property Owners Association . . . ." (Emphasis added.)

Even if the unit owners somehow were interpreted to have been assigned some maintenance responsibility for the Utility's mains or lines, the POA has never "incurred" and such maintenance costs, a condition even in the condominium documents for the condominium's own lines.

However, Mr. Rasmusen fails to understand the distinction between, on the one hand, utility mains and lines that are located on or within the condominium's property which the condominium owns and is responsible for maintaining, (regardless of whether they are located in the condominium "Common Areas"), and on the other hand, those mains and lines which are located outside condominium property, which the Utility and not condominium owns and is responsible for maintaining, and which are located in development Common Areas pursuant to easements.

The Utility does not own, and it is not responsible for the maintenance of, water and wastewater lines on the condominium common areas. Those are the responsibility of the condominium associations pursuant to the condominium covenants. (See Tr. 647 and Exhibit 5, Fourth Amendment to the PUD, dated March 30, 1981, (previously identified as RWR-2), and Exhibit "C" attached thereto, the Declaration of

Cluster Protective Covenants and Restrictions for Sailfish Point Villas, recorded in OR Book 518 at pages 479 and 501, respectively. (See also Tr. ___).

Mr. Rasmusen misconstrues the maintenance covenant: it only applies to lines within the condominium boundaries and which are owned by the condominium as elements in common <u>to the condominium</u>, not elements in common to the development in general. (Tr. 647).

The Utility <u>does</u> own, and is responsible for the maintenance of, water and wastewater lines in common areas otherwise running through the <u>development</u>. (Tr. ___).

Mr. Rasmusen did not know whether the POA had ever maintained the lines and mains, and he did not know whether the POA had ever paid for the maintenance or upkeep, repair, replacement of any of those lines or mains. (Tr. 674).

Besides failing to support the contentions by the Sailfish Point Property Owners Representaties (SPOR), their documents in Exhibit 5 do not establish any fact either compelling or authorizing the Commission to make any finding in this utility rate case. The documents in Exhibit 5 are offering statements, zoning agreements, or covenants between the developer and lot purchasers. None of those documents establish the cost of utility facilities. Those costs are contained in the books and records of the utility and are summarized in the MFRs.

The documents in Exhibit 5 were originally filed by SPOR

to challenge ownership of the lines and mains by the utility, an issue which the Prehearing Officer has previously ruled is beyond the jurisdiction of the Public Service Commission. Those documents are no more supportive of SPOR's claims in the current Issues 3 and 4 than they were on the ownership matter.

None of those documents establish the portions of the utility's facilities that are used and useful in serving the public. Used and useful is determined by evaluating the records and operations of the Utility. Those documents neither established the service availability charges authorized by this Commission nor do they record the amounts collected and recorded as CIAC. That information is found in the books and records of the Utility and in its tariffs, and is summarized in the MFRs. None of those documents bind the Commission nor does the Commission regulate those documents. They are irrelevant to this proceeding.

Even if some developer document somewhere provided that the POA had any responsibility, at any time, for maintaining any of the utility's lines or mains, the SPOR Intervenor asked "Is it possible that we [SPOR] would have the opportunity to file a . . . late-filed exhibit to reflect if there have been any expenditure by the POA on improvement which the Utility contends are utility improvements?" (Tr. 679). The POA comptroller was unavailable to confirm it, and the Presiding Officer agreed to allow the filing stating, "We will accept the Late-Filed Exhibit no. 19 -- " (Tr. 679). Because the

POA owns and does have the duty to maintain irrigation lines, the SPOR's attorney agreed that, in Exhibit 19, he would differentiate any POA maintenance expenses between irrigation lines and utility lines, and stated, "I will represent if we cannot make it clear, if we can't differentiate them we will tell you that and tell you what it is we say we include in that." (Tr. 680).

At the hearing, the Utility's attorney requested an opportunity to file a late-filed exhibit in rebuttal to SPOR's proposed Late-Filed Exhibit 19. (Tr. 680). The opportunity was confirmed for the Utility to object to SPOR's exhibit. (Tr. 681).

SPOR did not file any Exhibit 19 on July 15, the due date. (Tr. 684).

In response to two telephone inquiries to the SPOR attorney's office after the deadline to file, the undersigned attorney was advised by his secretary that, because SPOR had not been able to find any POA expenditures for maintenance of water or wastewater lines or mains, SPOR would not be filing the exhibit. The undersigned counsel asserted that the exhibit must be filed because a finding of no such expenses was relevant to the assertions which had been made by SPOR at the hearing. After consultation with the SPOR attorney, his secretary reported back that the filing deadline for the late-filed exhibit had passed (July 15), and that no exhibit would be filed. A procedural inquiry to the Commission Staff

Attorney asking whether the filing of Exhibit 19 was mandatory. The request resulted in the response that the Presiding Officer would not compel the filing of Exhibit 19, but since no evidence of any POA expenditures was submitted, the lack of filing would be so construed.

Furthermore, even if the POA had done maintenance on the water and wastewater lines, Mr. Seidman pointed out that, ". . . they would have to be responsible to the Utility for the conduct of that maintenance and according to their direction. And I would assume if they were doing it, then that they would bill SPUC for having done it and therefore it would still end up in rates." (Tr. 371-72). Under the Utility's certificate, it has the responsibility to maintain the water and wastewater lines. (Tr. 372).

SPUC is the only entity which has received a certificate from the Public Service Commission to serve Sailfish Point. And for the requirement in the county-approved Declaration of Covenants that the developer be responsible for seeing that certain facilities are provided in the development, that doesn't change the fact that the expenses were incurred by the utility in maintaining the facilities. (Tr. 382).

Furthermore, you don't have to have a separate corporation to be the utility. It could be a division of the developer. (Tr. 353). In the initial stages of construction, the utility assets were held under the parent corporation (SPI). The books and tax records show that they always

separated it as an asset (and not a cost of goods sold) with the intent of merely later changing the corporate identity to set those assets out more clearly. It is as if they had initially set up and operated the utility as a separate division. (Tr. 458).

And as for a planned unit development (PUD) agreement (see Tr. 385-86) requiring the developer to be responsible for completing or maintaining certain facilities in the development, the developer in this case has met its responsibilities: it has either constructed the utility facilities and sold them to its wholly owned subsidiary, or it has required its wholly owned subsidiary utility to construct the facilities in accordance with the PUD. Either way, the developer has met its responsibilities under the PUD. In fact, the PUD provides that the developer shall have the right to ". . . construct the utility facilities . . . " and that the ". . . utilities shall be owned and operated by Sailfish Point Utility Corporation, or such other entity authorized by the Declaration of Protective Covenants and Restrictions for Sailfish Point, . . . which corporation or entity shall, prior to providing water and wastewater treatment services to the Sailfish Point property, receive certification to operate from the Florida Public Service Commission." (Tr. 385-86).

In response to Mr. Rasmusen's prefiled testimony, Mr. Seidman responded in rebuttal (Tr. 204-07) what he thought was important for the Commission to consider in this utility rate

proceeding. That testimony is significant and is attached hereto as Appendix "E". In essence, Mr. Seidman points out that SPUC, as the only entity authorized to provide water and wastewater services, had the exclusive right, and responsibility, to provide water and wastewater utility services at Sailfish Point. It is required to operate and maintain all of its facilities, up and including the point of delivery. SPUC is authorized to charge for the cost of operating and maintaining the water and wastewater systems. None of the utility facilities are "part of" the "Common Areas" and are thus the responsibility of the Utility, not the POA. The POA is not authorized to assess residents of Sailfish Point for water or wastewater services.

Therefore, the water treatment facilities, the wastewater treatment facilities, the water distribution and wastewater collection lines and mains, all are owned by the Utility and should be included in the rate base calculations. The utility plant constructed before 1984 and conveyed to the Utility also should be included in the rate base. It has not been written off as a cost of good sold.

ISSUE 4: Should the cost of the water treatment and wastewater treatment facilities located upon the Utility Parcel be included in the rate case calculations?

UTILITY: Yes.

See response to Issue 3.

ISSUE 5: Should the pre-1984 construction of the utility plant by SPI, while the utility was a division of SPI, be removed from rate base because the cost of this utility plant was included in the cost of developing the lots?

UTILITY: No, the cost of plant was treated as a depreciable asset for tax purposes by SPI and was not expensed as a cost of developing the lots.

See response to Issue 3.

ISSUE 6: Should a margin reserve be included in the calculations of used and useful plant?

UTILITY: Yes.

Section 367.111(1), Florida Statutes, requires every utility to maintain the ability to serve existing and potential customers within a reasonable time. To be able to meet that requirement, it is imperative that the utility have sufficient facilities not only to meet the current demands of existing customers but also to satisfy customer growth.

In his direct testimony, OPC Witness DeMeza acknowledged that it is the utility's responsibility to maintain a margin reserve to meet this obligation. (Tr. 571-72). On cross-examination, Mr. DeMeza also acknowledged that margin reserve is one mechanism for ensuring that the utility company is compensated for the risk it takes to be ready to meet its obligation to serve future customers. (Tr. 586).

As pointed out by Mr. Seidman, margin reserve is that portion of utility facilities required to be ready to serve the additional service requirements of existing customers and the anticipated service requirements of potential new customers. The plant investment associated with margin reserve is a necessary component of used and useful plant. (Tr. 195).

And as further pointed out by Mr. Seidman,

> Mr. DeMeza apparently believes that a utility is compensated for the risk of providing margin reserve by the return it makes on its investment. But, if the utility's investment in margin reserve is

> not included in rate base, then it cannot earn a return on the money invested in margin reserve.

Therefore, a margin reserve should be included in the calculations of used and useful plant.

ISSUE 7: If the Commission allows a margin reserve should it adopt the utility's allowance?

UTILITY: Yes.

The margin reserve for water and wastewater treatment facilities is represented by eighteen months' growth in the peak day treated volume for water plant and the average day, peak month for wastewater plant. For distribution and collection mains, margin reserve is represented by one year's growth in residential customers. The growth projections used reflect anticipated customer growth based on recent customer-to-lot sales ratios experienced at Sailfish Point. This is considered a better indicator of growth than a five year average. (Exhibit 2, Volume I, page 143).

With the Utility's duty to serve set forth in §367.111(1), Florida Statutes, and the Commission's duty to set rates using the standards in §367.081(2), Florida Statutes, the proper amount of margin reserve is as proposed by the Utility.

ISSUE 8: Is the utility's provision for fire flow correct?

UTILITY: Yes.

The utility's provision for fire flow is based on a requirement of 1500 GPM for 2 hours because Sailfish Point has condominiums as well as single family homes. (Exhibit 2, Volume I, page 136). (Tr. 574). In areas outside the condominiums, the fire flow requirement is 500 GPM (Tr. 587) which the Utility can provide. (Tr. 575).

Although SPUC's pumping capacity is sufficient to meet peak demand requirements (including fire flow) when all pumps are working, OPC witness DeMeza has recommended that zero fire flow allowance be included because full fire flow requirements and peak demand requirements cannot be met with the largest pump out of service. (Tr. 197). This is an absurd ratemaking approach. It effectively says that when plant reaches the point when it is 100% used and additions are necessary, it suddenly becomes 100% useless. (Tr. 197).

It should be clear that if plant is fully utilized, the investment is serving the customers. To reduce rate base under these circumstances is inconsistent with regulatory precedent. (Tr. 198).

On cross-examination, the Utility's engineer, Mr. Reese, testified that the Utility can presently meet the 1500 GPM fire flow requirement including the maximum day flow demand. However, because it could not meet all the requirements if the largest pump were out of service, it would be appropriate to

include an additional pump in the next expansion. (Tr. 501).

A customer, Mr. Duerr, raised a question about the possible impact of six-inch lines on fire flow at condominiums. (Tr. 61. See also Tr. 503, 506-507). Late Filed Exhibit 11 sets forth the results of the Utility's efforts to verify the size of lines serving the three existing condominiums at Sailfish Point.

Exhibit 11 discusses the water lines going into the three condominiums. The 2800 Condominium and the 2001 Condominium have ten-inch utility mains, into which eight-inch mains are tapped. Both metered water service and fire line service is provided from the ten-inch main. The fire lines are not Utility property and are not the responsibility of the Utility. The fire lines are not metered and no charge is made for fire line service by the Utility. The design of the fire line system on the condominium grounds is part of the overall design of the condominium. The plans and contracts for these two condominiums that could be located suggest that the service is provided through an 8-inch line to the pump house but the fire lines that branch off to the buildings are 6-inch lines. (Exhibit 11).

For the Ocean Isles Condominium, 6-inch fire lines are tapped directly into the Utility's 10-inch main. The fire lines are not Utility property and are not the responsibility of the Utility. The fire lines are not metered and no charge is made for the fire line service by the Utility. The design

of the fire line system on the condominium grounds is part of the overall design of the condominium. The customer (Mr. Duerr) was incorrect in his belief that these lines also feed the irrigation system. The fire lines are tapped off of the potable water system. Irrigation is provided by a completely separate system that is operated by the Property Owners Association. (Exhibit 11).

All the elements necessary for the Commission to consider fire flow as an element of used and useful are in place. There is adequate pumping capacity to provide fire flow; there are sufficient hydrants to deliver the fire flow; and the Utility has requested recognition of fire flow in its used and useful calculation. (Tr. 199).

Therefore, the Utility's provision for fire flow is correct.

ISSUE 9: Is the level of unaccounted for water reasonable?

UTILITY: Yes, the level of unaccounted for water is reasonable.

The unadjusted level of unaccounted for water; i.e., nonmetered water, is 20.51% of total gallons pumped. This is before recognition of "other uses" such as plant use, flushing and line breaks (Exhibit 2, Volume I, page 134). The company has indicated that when such legitimate uses are recognized, the level of unaccounted for water is 8.06% of total gallons pumped. (Exhibit 6, page 17). The Commission has used 10% unaccounted for water as a guideline. Therefore, the level of unaccounted for water, after recognizing "other uses", is reasonable.

Therefore, the level of unaccounted for water, as further explained by Exhibit 6, is reasonable.

ISSUE 10: Are the utility's calculations to determine the number of equivalent residential connections for Sailfish Point by year for the years ending June 1990, 1991 and 1992 correct?

UTILITY: Yes.

The Utility did not directly calculate ERC's in its determination of plant and margin reserve requirements. The Utility projected treatment plant requirements based on the increases in the peak requirements related to customer growth. Peak demands were projected to increase in direct proportion to the increase in volume sales. (Exhibit 2, Volume I, page 139).

The growth projections used reflect anticipated customer growth based on recent customer-to-lot sales ratios experienced at Sailfish Point. (Exhibit 2, Volume I, page 60). This is considered a better indicator of growth than a five year average. (Exhibit 2, Volume I, page 143). The Utility pointed out that historic growth was not considered indicative of future growth in this case for several reasons. This project is winding down. The rate of sales in the final stage of a development is different than during the growth years. Also, the economy is in a recession and therefore growth may be somewhat reduced. For these reasons, long term historic trends were not used. (Exhibit 2, Volume I, pages 144, 145). Instead, the most recent two year customer-to-lot sales ratios were used as indicative of near-term customer growth. (Exhibit 2, Volume I, page 139).

For the purpose of evaluating distribution and collection

line requirements, the Utility considered the number of potential lots served by existing lines and the number of projected customers during the test year. (Exhibit 2, Volume I, page 141). The use of ERC's determined on a volume use basis (as suggested by the OPC engineering witness DeMeza) is improper because the number of lots connected to lines does not vary based on volume used. (Tr. 200).

Therefore, the Utility's methodology for determining the number of connections for the purposes of calculating use and useful, including margin reserve, are appropriate and should be utilized.

ISSUE 11: Is the utility's calculation for projected peak day water demand correct?

UTILITY: Yes, as corrected at the hearing.

The projected peak day calculation for the test year ending June, 1992, is shown by the Utility to be 234,333 GPD. (Exhibit 2, Volume I, page 139). That calculation is based on applying the year-to-year percent change in volume sales to the previous year peak day flow. However, the percentage change was picked up from the previous year. (Tr. 337). Therefore, as Mr. Seidman testified on cross-examination, when the correct percent change is applied, the test year projected peak day is 219,433 GPD. (Tr. 336).

The obligation to serve the demand of all customers is not mitigated by maintaining the ability to serve a lower "average" demand, no matter how that average is computed. Either the utility is obligated to serve that peak demand or it isn't. And to be able to serve that peak demand, then by definition it must have sufficient reserve to serve the peak demand, not an average demand.

Therefore, in calculating water plant used and useful, the peak day rather than an average day is the correct measure of peak day water demand.

ISSUE 12: What are the appropriate percentages of used and useful plant?

UTILITY: The appropriate used and useful percentages are:

Account	Description	Percent Used & Useful
WATER		
304-320	Production, treatment & pumping	100%
330	Storage	93.92%
331	Transmission and distribution mains	75.17%
330, 334-348	All others	100%
WASTEWATER		
370-381	Treatment and disposal	93.9%
361	Collection	75.17%
353, 391-398	All others	100%

Adjustments to plant in service are needed to reflect the percentage actually used and useful. The appropriate used and useful percentages are those developed in Exhibit 2, Volume I, pages 138, 140 and 141. Those percentages include the appropriate allowance for a margin reserve and are summarized above as the Utility's position. These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

Mr. Seidman testified that, in general, the percent used and useful of the treatment facilities is based on system

demands (peak day for water, peak month for wastewater). The percent used and useful for distribution and collection plant is based on the ratio of the number of customers served to the number that can be served by the lines in place. In each case, a margin of reserve is included to cover the investment required of the utility to be ready to meet its statutory obligations to serve within a reasonable period of time.

In determining the appropriate percentage of used and useful wastewater treatment plant, consideration was also given to the economic benefits associated with the modifications under construction that are being completed in 1991. The existing plant operates under a construction permit, but has never been issued an operating permit. Since the design of the plant was originally approved, regulatory requirements for equipment redundancy have changed considerably. (Tr. 484). In order to meet those requirements and receive an operating permit, modifications are being completed that meet DER requirements <u>and</u> result in the plant being rerated from 125,000 GPD to 250,000 GPD. (Tr. 485).

During negotiations with DER it became evident that DER could have required the utility to add dual chlorine contact basins, dual clarifiers and, somehow, subdivide the existing aeration basin. Subdividing the basin does not appear to be a viable option. (Tr. 511). Through negotiations, DER agreed that, instead, it would allow the utility to construct another 125,000 GPD aeration basin with related filters and a process

monitoring system. <u>As a result of this negotiated approach, the plant capacity is being doubled in size for approximately the same cost of adding equipment redundancy with no added capacity</u>. (Tr. 485).

To recognize the economies and the prudency of this approach, the used and useful determination for the wastewater treatment plant is measured against the 125,000 GPD capacity rather than the 250,000 GPD after modifications. If this recognition is not given, the utility will be penalized by having substantially all of the investment necessary for the modification excluded from rate base, even though the investment is necessary in order to obtain an operating permit. (Exhibit 2, Volume I, page 140).

The application of these percentages to primary plant accounts are found in Exhibit 2, Volume I, pages 21-23. These used and useful percentages are also applied to the depreciation reserve and expense and to property taxes. The application of these percentages to accumulated depreciation can be found in Exhibit 2, Volume I, pages 27-30. For depreciation expense they are found in Exhibit 2, Volume I, pages 42-43, and for property taxes at page 87. The resulting deductions for non-used plant and accumulated depreciation are summarized at page 24. (Tr. 170, 171).

Therefore, the percentages of use and useful plant set forth above are the appropriate percentages.

ISSUE 13: **What are the appropriate amounts of non-used and useful utility plant-in-service?**

UTILITY: **Water $184,985; wastewater $298,966.**

The appropriate amounts of non-used and useful utility plant in service, net of depreciation, for the test year ending June, 1992, are $184,985 for the water system and $298,966 for the wastewater system. (Exhibit 2, Volume I, pages 1 and 2). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 14: Should there be an imputation of contributions-in-aid-of-construction (CIAC) to offset margin reserve?

UTILITY: No. Imputing CIAC mismatches potential, but uncollected contributions against invested plant.

The OPC consultant (Mr. DeWard) recommended that if margin reserve is allowed, it be offset by imputing CIAC.

The Utility's consultant (Mr. Seidman) explained why that would not be a fair procedure:

> . . . Margin reserve represents an investment "in place." The funds have been spent and are a utility investment. The CIAC from potential new customers is not available until they hook up - if and when they hook up. For the period between providing the plant and collecting the CIAC, margin reserve is an investment entitled to be earned upon.
>
> Furthermore, at the time a new customer does hook up and pays CIAC, the CIAC will be recorded to offset the plant investment. However, the utility must simultaneously replace that portion of margin reserve so as to be ready to serve another customer. As a practical matter, there will always be a lag between the investment in margin reserve and the collection of associated CIAC. For this reason, anticipated but uncollected CIAC should not be imputed against current margin reserve. (Tr. 196-97).

ISSUE 15: Should income taxes on contributions-in-aid-of-construction (CIAC) be capitalized in rate base?

UTILITY: Yes.

SPUC does not gross up CIAC charges. (Tr. 172). Deferred (Prepaid) Income taxes on CIAC should be capitalized and included in rate base. (Tr. 168). Deferred income taxes on CIAC should be treated consistent with Commission Order No. 23541, issued October 1, 1990. According to that Order, at page 16, in Florida, the norm is to offset debit deferred taxes against credit deferred taxes in the capital structure. If the net of the credit and debit deferred taxes is a debit, the amount is included in rate base.

ISSUE 16: What is the appropriate amount of working capital to be included in rate base?

UTILITY: Water $29,786; wastewater $20,781 based on the formula method required by PSC Rules.

The appropriate amount of working capital is that determined in accordance with the formula method prescribed by the Commission in its rules. The method of determining working capital has been prescribed by Commission Rules 25-30.437 and 25-30.443 Fla. Admin. Code. (Tr. 186). Each of these rules requires the use of the Form PSC/WAS 17 6/90 [Class A & B utilities] or Form PSC/WAS 18 6/90 [Class C utilities], respectively. Each of these rules incorporates the respective form into the rule by reference. Page 4 of Form PSC/WAS 17 and Page 3 of Form PSC/WAS 18 include the identical statement regarding working capital:

> It should be noted that the working capital method to be used is the formula method (1/8 of O & M Expenses) without an allowance for deferred debits. If a utility submits a working capital allowance based on the balance sheet method, the cost incurred for this calculation will not be considered in rate case expenses. (Emphasis added.)

See also (Tr. 187).

Based on the formula method, the working capital allowances calculated for the test year ending June, 1992, is $29,786 for the water system and $20,781 for the wastewater system. (Exhibit 2, Volume I, pages 1 and 2). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 17: What is the appropriate level of test year rate base?

UTILITY: Water $1,609,063; wastewater $1,422,664.

The level of rate base calculated for the test year ending June, 1992, is $1,609,063 for the water system and $1,422,664 for the wastewater system. (Exhibit 2, Volume I, pages 1 and 2). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

COST OF CAPITAL

ISSUE 18: What is the appropriate capital structure for ratemaking purposes?

UTILITY: The parent, Mobil Corporation.

For SPUC, the appropriate capital structure for ratemaking purposes is that of the parent, Mobil Corporation.

All funding for SPUC originates from the parent. (Tr. 181). SPUC is a wholly owned subsidiary and has no capital sources of its own. (Tr. 187-188). SPUC has no outside debt and it is doubtful that it could obtain outside debt without the guarantees of the parent. Therefore, the capital sources of SPUC and the cost of those sources can only be those of the parent. (Tr. 187, 188).

The capital structure as reflected on the books of the Utility is nothing more than an allocation of the capital received from the parent either directly or through Mobil's subsidiaries. (Tr. 188). Mobil could have structured capitalized SPUC with the same relative capital structure that Mobil maintains on a consolidated basis. (Tr. 428). And Mobil sees no problem in doing so. (Tr. 429).

The company has no problem with investing equity in the utility during the projected test year ending June, 1992, in order to capitalize it with the same relative capital structure as Mobil. Therefore, since Mobil's capital structure reflects the actual financial conditions of SPUC, and since Mobil is agreeable to adjusting SPUC's capital

structure to reflect these actual conditions, the appropriate capital structure for ratemaking purposes is that of Mobil Corporation.

ISSUE 19: What is the cost of common equity capital?

UTILITY: 11.85% based on the parent's equity ratio at December, 1990, and the current leverage formula in Order No. 24246.

The cost of equity capital should be determined using the Commission's most recent leverage formula and Mobil Corporation's equity ratio. Although Mobil is a large unregulated company and has a high equity ratio (67% based on Exhibit 7, page 33) compared to small regulated water and wastewater utilities, this structure carries with it the benefits of access to lower embedded debt costs. (Exhibit 6, page 1). Regardless, the leverage formula serves to balance the impact of the equity to debt ratio trade-off. As the more costly equity balance increases relative to the debt balance, the return on equity decreases. On this basis, the Commission has found an equity ratio as high as 74% to be prudent. (Order No. 22843 at page 51; 90 FPSC 4:403).

ISSUE 20: What is the cost of debt capital?

UTILITY: The cost of debt capital is 9.5% percent in the test year, based on Mobil's 1990 embedded cost of debt.

The cost of debt capital should be the most current 1990 embedded cost of debt of Mobil Corporation. (Tr. 426). The average cost of Mobil's debt in 1990 was 9.57%. (Exhibit 6, page 3 and Exhibit 7, pages 31 and 33.) SPUC, on its books, shows substantial amounts of debt as intercompany advances with no interest expense assigned. However, that should not be interpreted as if the parent had made this capital available cost-free. The fact that one company pays interest and another related company collects it, is a wash on a consolidated basis. Assigning interest expense under these circumstances is only a means of allocating costs. (Tr. 189). As pointed out by Mr. Olson, Mobil's Federal Income Tax Manager for Tax Administration in Dallas, Texas, it is a common practice, in Mobil Corporation and its subsidiaries, to transfer funds intercompany without having a cost attached. However, when that is done it is not considered a gift or contribution. (See Mr. Olson's testimony at Tr. 516, 522, and Mr. Seidman's testimony at Tr. 405).

OPC witness DeWard argues that, since the utility has lost money every year and has "financed" those losses with intercompany advances with no cost allocated, this condition is apparently acceptable to the Utility's owners and it would be inappropriate for the Commission to change that condition.

(Tr. 610-11). Mr. DeWard apparently believes that when the owners of a utility allow it to incur a loss, the Commission should recognize that as a preferred choice and force that utility to continue sustaining losses forever.

However, as Mr. Seidman properly points out, that is a choice for the utility and not for the Commission to make. Although this Commission may allow a utility to voluntarily operate at a loss, it cannot require it to do so. When requested by a utility or upon its own motion, "The commission shall . . . fix rates which are just, reasonable, compensable and not unfairly discriminatory." (Emphasis added. Section 367.081(2), Florida Statutes. Tr. 190).

Therefore, the Commission cannot default to cost free debt when indeed the parent incurs a cost for that debt and has requested to recover the cost of that debt. The only costs that are relevant are the original capital sources which are the equity of Mobil and the outside financing to Mobil. (Tr. 189). The Commission should set the cost of debt at Mobil's most current 1990 embedded cost.

Issue 21: What specific adjustments should be made to accumulated deferred income taxes?

UTILITY: All adjustments are reflected in the MFRs.

The accumulated deferred tax credits are an accumulation of the tax difference resulting from the difference in depreciation calculated on a straight line basis for book purposes and on an accelerated basis for tax purposes. This causes a tax savings in the early years of an assets life and a tax expense in the assets later years. Over the life of the asset there is no difference in the tax, assuming the tax rate is constant over the life of the asset.

The tax schedules in Exhibit 2, Volume I, 97-99 calculated the accumulated deferred tax savings for the utility assets since they were purchased from SPI and SPUC. However, the tax savings accrued prior to the asset transfer were not reflected as they should have been. Those savings should be recognized and normalized for ratemaking purposes in accordance with Internal Revenue Code Section 168-E. (Tr. 556). The federal tax rate for years prior to 1987 was 46% and the tax rate in 1987 was 40%. Since that time the tax rate has been 34%. (Tr. 216). For rate making purposes, the accumulated deferred tax credits should be restated to reflect the tax rate in effect in the year the credit was taken. (Tr. 220). Appendix "F" is a restatement of the Accumulated deferred tax balance using the information in Exhibit 3, page 1 and 2, and Exhibit 2, pages 98 and 99.

Therefore, on this basis, the accumulated deferred tax

credits for the average test year ending June, 1992, is $709,698.

ISSUE 22: Should debit and credit deferred taxes be offset, with the net credit included in the capital structure at zero cost?

UTILITY: Debt and credit deferred taxes may be used to offset each others. A net credit would be included in the capital structure at zero cost. A net debit would be included in rate case at the allowed rate of return.

See response to Issue 15.

ISSUE 23: What is the appropriate amount and cost rate of investment tax credits to be included in the capital structure?

UTILITY: The appropriate amount of ITC for the average test year ending June 1992 is $709,698.

An investment tax credit in the amount of $270,000 was taken by Sailfish Point, Inc. (SPI) in 1981. This is 10% of the utility assets placed in service in that year. (Tr. 224). Those credits were included with all the other ITC's generated by other Mobil subsidiaries, and were taken against the consolidated tax return liability in 1981. (Tr. 538). Internal Revenue Code Section 46 requires that normalization of ITC's be taken on Utility property. (Tr. 557). The ITC's should have been transferred to SPUC with the transfer of assets. (Tr. 557).

If the ITC's are carried over and normalized, as they should be, the correct amount of unamortized ITC's in the year ending June, 1992, is determined as follows:

ITC in 1981	$ 270,161
Annual Normalization over 40 years	6,765
Unamortized Balance, June 1991	189,102
Unamortized Balance, June 1992	195,867
Average Balance, June, 1992	$ 192,485

In addition, in 1983, SPUC transferred CWIP to plant in the amount of $1,016,057. Of this amount, $39,000 was land and $997,057 was eligible for ITC at a rate of 10%, but was not taken. (Tr. 226-27).

If the ITC's are imputed and normalized, as they should

be, the correct amount of unamortized ITC's in the year ending June, 1992, is determined as follows:

ITC in 1983	$ 99,706
Annual Normalization over 40 years	2,493
Unamortized Balance, June 1991	74,776
Unamortized Balance, June 1992	77,269
Average Balance, June 1992	$ 76,022

The total ITC's remaining in 1992 would be $273,136.

Therefore, the average unamortized ITC balance at June, 1992, that should be reflected in the capital structure is $268,507.

ISSUE 24: What is the weighted average cost of capital including the proper components, amounts, and cost rates associated with the appropriate capital structure?

UTILITY: 8.19% based on the parent's 1990 equity ratio and debt cost.

The weighted average cost of capital should be the weighted average cost of debt and equity capital for Mobil Corporation at year end 1990, taking into account the deferred tax balance and ITC components for SPUC.

The Mobil equity and debt balances and percentages at December, 1990 were:

Common Equity	$16,273	66.7%
Preferred	799	3.3
Long & Short Term Debt	7,314	30.0
Total	$24,386	100.0%

(Exhibit 7, page 33)

The average cost of debt for 1990 was 9.57%. (See Issue 23).

The preferred stock dividend is accrued at the rate of 7.72%, as reflected in the Mobil 1989 and 1990 Annual Reports and as shown in Exhibit 2, Volume I, pages 107-109.

The allowable return on equity, based on the most recent leverage formula is 11.85%. (See Issue 19).

The average balance of ITC's for the test year ending June, 1992, is $268,507. (See Issue 23).

The average balance of accumulated deferred tax credits is $709,698. (See Issue 21).

The average balance of accumulated deferred tax debits is $249,839. (See Exhibit 2, Volume I, page 66).

When this most recent information is reconciled to the test year rate base at Exhibit 2, Volume I, page 109, the weighted cost of capital is 8.14%, as shown below:

	Rate Base	Ratio	Cost	W't'd Cost
Common Equity	$1,369,699	49.24%	11.85%	5.83%
Preferred	67,766	2.44	7.72	.19
Long & Short Term Debt	616,057	22.15	9.57	2.12
ITC's	268,507	9.65	0.00	0.00
Deferred Tax Credits	709,698	25.51	0.00	0.00
Deferred Tax Debits	(249,839)	(8.98)	0.00	0.00
Total	$2,781,888	100.00%		8.14%

Therefore, the weighted average cost of capital is 8.14%.

NET OPERATING INCOME (NOI)

ISSUE 25: Are intercompany expense allocations appropriate?

UTILITY: Yes.

Mobil Land Development (Florida) Corporation allocates charges to all of its subsidiaries, including SPUC. The services provided to SPUC by MLD(FL)C include an Operations Manager, accounting service and legal service. (Tr. 343-44).

The amount allocated to SPUC for these services was $74,701 in 1989 and $122,084 in 1990. (Exhibit 4). However, the amount included in expenses for the test year ending June, 1992, was only $64,722. (Tr. 343). Rather than use these higher allocation figures, which included higher estimated costs in 1990 due to regulatory activity, the rate filing used only the actual amounts incurred through June, 1990 and increased it by the PSC index factor of 4.12% per year through June, 1992. (Tr. 342-43; Exhibit 2, Volume I, page 58). An annual charge of $65,000 per year for accounting, legal and management is entirely reasonable.

Therefore, the intercompany expense allocations are appropriate.

ISSUE 26: Should the utility's purchased power and chemical expense be adjusted for unaccounted for water?

UTILITY: No.

The company's filing includes a 5% reduction in electric and chemical expense to recognize nonrecurring unaccounted for amounts of water. (Tr. 175). That would bring the unaccounted for water level down to 15% before recognizing "other uses", or approximately 3% after recognizing other uses. Maintaining a 3% level of unaccounted for water is not a reasonable expectation. Therefore, after taking into consideration the identification of "other uses", the 5% adjustment to electric and chemical expenses originally proposed by the Utility should not be followed.

Therefore, the adjustments in Exhibit 2, Volume I, page 48 to reduce electric expense by $1,347 and chemical expense by $1,194 are not necessary.

ISSUE 27: Is the replacement program for the new spiral wound membranes appropriate?

UTILITY: Yes.

The test year expenses include $24,488 as annual expense for the periodic replacement of membranes in the reverse osmosis water treatment system. (Exhibit 2, Volume I, page 78). This is based on an average three year life expectancy for the new membranes.

While it is true that the membranes being replaced lasted approximately ten years, the volume of water treated by those membranes was quite low in their early years and they were not being fully utilized during that time. (Tr. 494). The membranes have a physical life that is related to flow as well as chronology. (Tr. 498). If you look at the volume of water treated over the previous 8 to 10 years and compare it to what you probably will treat over the next three years, you have almost the same volume treated in the next three years as you did in the previous ten. (Tr. 511). This higher volume of flow will contribute to a much shorter calendar life for the new membranes although they will last as long as the original membranes on a volume treated basis. (Tr. 494).

Mr. Reese, a registered professional engineer in Florida and consulting engineer for the SPUC facilities, recommends a three year change out program because he found it more prudent to schedule the change out period to match the manufacturer warranty period than to speculate as to whether the membranes may or may not last longer. (Tr. 495). Mr. DeMeza, witness

for OPC has recommenced that the changeout program for membranes be extended from three years to four years. Mr. DeMeza states, "In my opinion, the life of the membranes should be four (4) years not three (3) as suggested by the Utility . . ." (Tr. 583-84. Emphasis added). However, Mr. DeMeza has no experience in designing or permitting reverse osmosis plants and their accompanying membranes, nor is he a registered engineer. (Tr. 585). The value and validity of his opinion on this subject is questionable.

Mr. Reese testified that one of the reasons for not continuing to use the hollow fiber membranes is that ". . . the availability of the hollow fine fiber had all but disappeared. The industry has, for this type of brackish water treatment, almost universally gone to the spiral-wound membrane; availability as much as anything." (Tr. 509-10). He also testified that, in addition to the 3-year warranty period from the manufacturer, three (3) years is the industry standard for establishing projections on the performance of membranes. (Tr. 510).

He also noted that the new, spiral wound membrane is superior to the older hollow fiber type because "...they are more tolerant of silt density index ...[which is]...a measure of their ability to tolerate more suspended solids in the water." (Tr. 449).

Therefore, the Utility's proposed replacement period for the new spiral wound membranes is appropriate.

ISSUE 28: Should rate case costs for the prior docket be allowed in this case?

UTILITY: Yes. Allegations on which the dismissal was based were inaccurate and a substantial portion of work performed in preparing the 1989 case was required in preparing this case.

See response to Issue 29.

ISSUE 29: **What is the appropriate amount for current rate case expense?**

UTILITY: **The estimate included in the MFRs is $91,800 plus the $68,374 expense incurred for the prior rate case filing as requested in the MFR.**

The level of rate case expense calculated for this rate case and included in this filing is $91,800 plus the $68,374 incurred for the prior rate case, Docket No. 891114-WS. (Tr. 176; Exhibit 2, Volume I, pages 76 and 77).

As pointed out by the Utility's consultant, Mr. Seidman, "The cost of preparing, presenting and defending a rate application is not proportional to the size of the request or the size of the utility. The work necessary to prepare the new MFR's to evaluate used and useful, and to prepare testimony and positions must be done regardless of the size of the increase requested or the size of the utility." (Tr. 177).

He also pointed out that a substantial portion of the work done to support the original cost and CIAC collections was used in preparing for the current filing. Furthermore, information relied on by the Commission to dismiss the previous filing (as it related to alleged significant changes to the MFR's that were "unknown" to the Staff) was incorrect and should not be the basis for denying the utility the opportunity to recover its costs. (Tr. 178, 432).

In rebuttal testimony, Mr. Seidman added that a considerable amount of the information supporting the plant in service, contributions-in-aid-of-construction and meter

installations from inception was used to develop the current filing, to respond to Staff auditors and Staff inquiries, and to respond to discovery filed by Intervenors in the current case. (Tr. 191). Mr. Seidman estimated that anywhere from 50 to 60 percent of the time for the previous case was required to build up all of the original information through the test year, and that information was necessary to carry into the current case also. (Tr. 433). And the fact that different test years were used in the two filings would not affect the fact that the information built up for preparation was still necessary.

In his direct testimony, Mr. DeWard recommends that any of the legal costs incurred in this proceeding in opposing the intervention of the "homeowners association" be disallowed on the basis that ratepayers should not be required to pay for any costs associated with arguing against their rights to be "fairly represented". (Tr. 612-13). First of all, the opposition was not to intervention of the homeowners association. In rebuttal testimony, Mr. Seidman pointed out that the group in question, the "Sailfish Point Property Owners Representatives (SPOR)", is not a homeowners association. It is an advisory committee to the owners association. Furthermore, SPUC did not argue against their rights to be fairly represented as alleged by Mr. DeWard. In fact, what SPUC sought to assure was fairness in representation, and it was the merits of the allegations in

the Petition for Leave to Intervene to which SPUC objected. (Tr. 191). The Commission Order No. 24486 Granting Leave for SPOR to Intervene bears out SPUC's concern:

> However, we also find that the Utility has made valid arguments relating to the merits of some allegations made by SPOR. We find certain allegations made by SPOR of substantial entry are not of the type this rate proceeding is designed to protect and are remote, speculative and irrelevant.

The Utility is obligated to the other rate payers and to its own stock holders to object to intervention that can be "remote, speculative and irrelevant" and costly. (Tr. 192).

Attached as Appendix "G" is Rate Case Costs Incurred in the present case. The summary shows that 34% of the costs were attributable directly to the intervention of SPOR and OPC in this case.

Appendix "F" shows that the cost of this case will be almost $125,000 or $33,000 more than the estimate included in the rate filing. however, $42,000 of that cost is related to intervention. Clearly, the cost of, and the extent of, intervention by two parties, has had a major impact on overall rate case expense. Without the extent of the work necessary to respond to the expanded intervention the estimate of $91,800 included in the rate case filing would have been reasonably accurate.

	Intervention	Other	Total
Regulatory	$13,547.50	$60,262.70	$73,810.20
Engineer	603.40	3,354.82	3,958.22
Attorney	28,375.19	18,307.99	46,683.18
Total	$42,526.09	81,925.51	124,451.60

ISSUE 30: Is the utility's proposed depreciation expense overstated?

UTILITY: No.

The Utility's proposed depreciation expense is based on Commission Rule 25-30.140, adjusted for used and useful considerations. The amount of depreciation expense, net of amortization of CIAC, requested for the test year ending June, 1992, is $62,346 for the water system and $66,907 for the wastewater system. (Exhibit 2, Volume I, pages 42 and 43). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 31: Should the utility's requested provision for taxes other than income be approved?

UTILITY: Yes. The property taxes as reflected in the MFRs are adjusted for non-used and useful plant.

The Utility's requested provision for taxes other than income includes provisions for regulatory assessment fees at the current rate, payroll taxes adjusted to the projected salary levels and the historic level of real estate and property taxes adjusted to the projected levels of plant, adjusted for used and useful considerations. The amount of taxes other than income requested for the test year ending June, 1992, is $59,448 for the water system and $56,540 for the wastewater system. (Exhibit 2, Volume I, pages 42, 43 and 85-87). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 32: Should a parent debt adjustment be made in this case?

UTILITY: No.

A parent debt adjustment is not appropriate in this case because the parent capital structure is being used. The interest expense for purposes of calculating the tax liability was inadvertently included in the MFR tax calculation. (Exhibit 2, Volume I, pages 65 and 89). That portion of the interest expense related to a parent debt adjustment is set out in Exhibit 6, page 10, so that the appropriate adjustment can be made. Since the interest expense for ratemaking purposes is a function of the capital structure used, these numbers are fallout numbers. They are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 33: What is the appropriate income tax expense?

UTILITY: At full authorized return; water $53,871; wastewater $47,427. (This is a fall-out number subject to adjustments to taxable income in this proceeding.)

The level of income tax expense calculated for the test year ending June, 1992, is $53,871 for the water system and $47,727 for the wastewater system. (Exhibit 2, Volume I, pages 42 and 43). As to income tax on CIAC, the current choice of the Commission is not to gross up income taxes on CIAC (Tr. 341), and the Utility does not gross up. (Tr. 339). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 34: What is the appropriate level of test year operating income before revenue increase?

UTILITY: Water: negative $122,270; Wastewater: negative $137,715.

The level of operating income calculated for the test year ending June, 1992 is negative $122,270 for the water system and negative $137,715 for the wastewater system. (Exhibit 2, Volume I, pages 42 and 43). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

REVENUE REQUIREMENT

ISSUE 35: What is the total revenue requirement?

UTILITY: At full authorized return; water $572,814; wastewater $477.580.

The total revenue requirement calculated for the test year ending June, 1992, is $572,814 for the water system and $477,580 for the wastewater system. (Exhibit 2, Volume I, pages 42 and 43). These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 36: Is an adjustment necessary to comply with Section 367.0815, Florida Statutes, regarding the limitation of rate case expense?

UTILITY: Yes, although the utility disagrees with the statutory provision.

The statute would call for an adjustment only if the Commission grants less than the requested revenue requirement.

However, the Utility would like to go on record as objecting to the statute on the grounds of constitutionality and unfairness:

> . . . First, the statute is discriminatory on its face, as it applies only to water and sewer utilities and only to those regulated by this Commission. Second, as previously pointed out, there is no correlation between the cost of the case and the size of the increase. Third, an application for a rate increase is by its very nature an adversarial proceeding. I cannot imagine a situation in which the Commission would accept every argument and every number prepared by a utility without at least one adjustment that would result in allowed revenues being less than requested revenues. Therefore, as a practical matter, this statute effectively prohibits a utility from every being able to recover all of its rate case expense, no matter how prudently incurred. [Tr. 178-79].

To require a water and sewer utility a) to face the costs imposed by two parties (OPC and SPOR) intervening to represent the same people, b) to incur the high cost of defending against the Intervenor's allegations (even successfully), and c) to deny the right to recover the costs of that defense is like having a football games where one team has to play the game with one hand tied behind its back.

RATES AND RATE STRUCTURE

ISSUE 37: **What final rates should be authorized?**

UTILITY: See Schedule E-1 of the **MFRs.**

The rates that should be granted are those set out in Exhibit 2, Volume I, page 123 and designated as "Full Return Rates".

ISSUE 38: **What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense?**

UTILITY: This is a fall-out number.

If the full amount of rate case expense requested in this filing is allowed, rates should be reduced by an amount sufficient to reduce operating revenues by $20,535 for the water system and $20,535 for the wastewater system. These numbers are fallout numbers in that they are subject to adjustments due to the resolution of factual issues in this proceeding.

ISSUE 39: **Is the utility's existing service availability policy in compliance with Rule 25-30.580, Florida Administrative Code?**

UTILITY: Yes.

The Utility believes its existing service availability policy is in compliance with Rule 25-30.580, Fla. Admin. Code. This rule is a "guideline" for designing service availability policy.

Rules 25-30.510 through 25-30.585 Fla. Admin. Code ". . . shall apply to a utility when it files for a change in its service availability policy or charges or when the Commission initiates a show cause proceeding to require the utility to change such policy or charges."

The Utility has not requested a change in its policy (Tr. 184), no evidence has been presented in this case regarding service availability policy, and the Commission has not issued a show cause order to this utility. Therefore, whether the Utility's policy is in compliance with this rule is irrelevant to this proceeding, and no action should be taken in this proceeding that results in a change to the existing policy.

However, the Utility's currently authorized service availability charges will not cause the level of CIAC to exceed the 75% guideline maximum at buildout. (Tr. 441).

ISSUE 40: What are the appropriate miscellaneous service charges?

UTILITY: The charges set forth in SAB No. 13 and a late charge alternative as contained in the proposed tariff.

The Utility has filed, and requests approval of, the Commission's model tariff as its proposed tariff. That tariff incorporates the miscellaneous charges set forth in Staff Advisory Bulletin No. 13. In addition, the Utility has requested approval of a $10.00 late fee to be charged in lieu of disconnection. Since many of the customers are not in residence all during the year, it would be better to put a penalty on the late payment rather than turn off the service in their absence. (Tr. 444). The miscellaneous charges requested are the appropriate charges to be approved.

ISSUE 41: Should a charge be established for gray water used by the golf course? If so, what is the appropriate charge?

UTILITY: No.

The parties are in agreement that no charge should be made for gray water provided for golf course irrigation. No evidence has been presented in this proceeding regarding whether a gray water charge is appropriate and, if so, on what that charge should be based. The Utility believes such a charge is not appropriate in this case because the Utility, and not the golf course receiving effluent, is the primary beneficiary of the arrangement. Without the availability of the golf course to receive effluent, the Utility could incur substantial costs to develop an alternative means of disposal.

CONCLUSION

In conclusion, Sailfish Point Utility Corporation has presented evidence demonstrating its need for, and entitlement to, rate relief.

All the utility assets (including lines and mains) are owned by the Utility. They were either acquired by the Utility by purchase in 1983 or were constructed by the Utility. They were never "donated", "contributed", or "written off" as a cost of goods sold.

The rate relief to which the Utility is entitled is in excess of the interim rate authorized and being collected, and, therefore, no refund is required.

<u>CERTIFICATE OF SERVICE</u>

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 22nd day of July, 1991.

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