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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates under grandfather rights to provide water and wastewater service by Sports ) Docket No. 907006-WS Shinko Utility, Inc. d/b/a Grenelefe Utilities in Polk County.

- PSC-RECORDS/REPORTING

## COUNTER-PETITION FOR FORMAL ADMINISTRATIVE PROCEEDING

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

- 1. The full name and address of Petitioner is: GRENELEFE ASSOCIATION OF CONDOMINIUM OWNERS NO. 1, INC. Post Office Box 7001 Grenelefe, Florida 33844
- 2. The name and address of the person authorized to receive notices and communications in respert to this petition is:

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AFA		F. Marshall Deterding, Esquire Rose, Sundstrom & Bentley										
APP			2548 Blairstone Pines Drive Tallahassee, Florida 32301									
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- 4. The disputed issues of material fact are:
- (1) Whether Grenelefe Utility ("Utility") had an approved non-potable irrigation rate when Polk County transferred jurisdiction of water and wastewater utilities in that County to the Commission.
- (2) Whether the Utility's implementation of a non-potable irrigation rate constitutes a willful violation of Chapter 367, Florida Statutes, and if so, what penalty should be imposed on the Utility.
  - 5. The ultimate facts are as follows:
- (1) At the time Polk County transferred jurisdiction over water and wastewater systems in the County, the Utility had no approved rate for non-potable irrigation service.
- (2) The revenue requirement established by Polk County in the Utility's most recent rate order includes a rate of return on the non-potable irrigation facilities; and for the operating and maintenance expenses of those facilities. Thus, the establishment of a rate for non-potable irrigation service without a reduction in the Utility's water rates for potable water service would result in a windfall to the Utility and put it in an overearnings position.
- (3) The Utility's implementation of an non-potable irrigation rate even though it knew such rate was not authorized constitutes a willful violation of the provision of Chapter 367, Florida Statutes, and a penalty of \$5,000 per violation per day should be imposed.

- is beyond the scope of the Commission's (4) It grandfather certification process to set a non-potable irrigation rate for the Utility.
- 6. The following Commission Rules and Statutes entitle the Association to relief:
  - Section 367.171, Florida Statutes
  - Section 367.161, Florida Statutes (2)
  - Rule 25-30.035, Florida Administrative Code

WHEREFORE, the Association requests that the Commission hold a formal administrative hearing and to thereafter decline to establish a non-potable irrigation rate, require a refund with interest of all revenue collected by imposition of the non-potable irrigation rate, impose a penalty in excess of \$50,000, and grant the Association such other relief as it just and reasonable.

> Respectfully submitted on this 15th day of January, 1998, by:

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

MARTIN S. FRIRDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Counter-Petition for Formal Administrative Proceeding has been forwarded via U.S. Mail to W. Bruce DelValle, Esquire, Foley & Lardner, 111 North Orange Avenue, Suite 1800, Orlando, Florida 32802-2193 and Bobbie Reyes, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-199 0850 this 15th day of January, MARTIN S. FRIEDMAN

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