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May 31, 1991

Steven Tribble,  
Director of Division of  
Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399

RE: Application for Sailfish Point Utility Corp. for a rate  
increase in Martin County; Document No: 90016-WS;

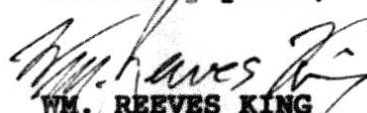
Dear Mr. Tribble:

Enclosed please find original and twelve (12) copies of the  
following Responses:

- 05559-9/1) Response of Intervenors to Utility's Motion to Limine and  
to Strike Testimony and Exhibits of Rasmusen;
- 05560-9/2) Response of Intervenors to Utility's Motion to Compel RE:  
Its First Request for Production; and
- 05561-9/3) Response of Intervenor to Utility's Motion to Retain  
Customer Hearing for Customer Issues.

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Sincerely yours,

  
WM. REEVES KING  
For the Firm

MAIL ROOM  
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FLORIDA PUBLIC  
SERVICE COMMISSION

DOCUMENT NUMBER-DATE  
05559 JUN-3 1991  
PSC-RECORDS/REPORTING

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:  
May 31, 1991

**RESPONSE OF INTERVENORS TO UTILITY'S MOTION IN LIMINE  
AND TO STRIKE TESTIMONY AND EXHIBITS OF RASMUSEN**

The Utility's Motion in Limine sets forth seven separately numbered grounds. This Response will deal with each seriatim.

1. The testimony of Rasmussen does not address the issue of whether the Utility should be exempt from Commission jurisdiction on the basis of some possible future event or SPOR's economic interests in this proceeding relate to possible future ownership of the Utility.

2. The testimony and exhibits are clearly within the limitations established by the Order permitting intervention. The testimony and exhibits are offered to prove that the Utility, by specific reference in the documents of title, has no ownership interest in or maintenance responsibility for any of the lines and mains lying outside the Utility Parcel - the particular real estate upon which the treatment plants are constructed. The Intervenors contend the title documents, attached as exhibits to the testimony of Rasmussen, demonstrate that the Utility has no ownership interest in improvements located outside the Utility Parcel and support the conclusion that improvements on the Utility Parcel were contributed by the Developer obtain a profit from its primary objective, the sale of real estate, just as the cost of the roads, waterways,

lagoons, canals, etc., were contributed as a part of the development costs of Sailfish Point. Mr. Seidman, the witness for the Utility, testified on deposition that the cost of those improvements would be treated as CIAC and not includable in rate base if the contentions of Intervenor's are proven to be fact. The issues of CIAC and rate base are clearly within the jurisdiction of the Commission. The testimony of the witness, Rasmusen, and its exhibits are directly pertinent to that issue. Should the Commission find that all of the facilities and improvements constituting the utility system to be CIAC it can certainly order that the value of those improvements not be included in rate base.

3. This is a re-argument of the Utility's Motion to Compel more specificity in the production of documents. The witness will be available for cross-examination and any specific questions that the Utility deems to be pertinent can be posed to him at that time. The exhibits were included so that all of the title documents would be available to the Utility to peruse prior to cross-examination so that the statements and conclusions contained in the testimony can be tested.

4. The Utility continues to attempt to impose upon the Intervenor the obligation to conform its testimony and exhibit methodology with that considered to be appropriate by counsel for the Utility. If counsel for the Utility through some prescience can determine what the witness expects to do at the hearing and concludes that his entire testimony and set of exhibits is filed mostly to show what is "not inconsistent" it seems like counsel has

indeed been able to determine the purpose of and necessity for filing all of the title documents.

5. Those ground is nothing but more grousing by the Utility because the Intervenors have not presented their evidence and exhibits in a manner deemed to be appropriate to the subjective judgment of the Utility's counsel;

(a) Counsel for the Utility seeks to testify as to the location and ownership of the lines and mains of FP&L, the cable company, and Southern Bell. If that is appropriate rebuttal testimony, it should be presented as testimony by a witness subject to cross-examination and not by counsel. Moreover, the ownership rights of the improvements carrying the services of other utilities to the residents of Sailfish Point is clearly not relevant to this proceeding. If the Utility can prove that those utilities are also wholly owned subsidiaries of Mobil Corporation who serve only Sailfish Point consumers, their property rights on Sailfish Point may be useful.

(b) Counsel for the Utility seeks to argue, by way of Motion in Limine, matters which appear to Intervenor's counsel to be appropriate final argument. There is no testimony in this record about who has responsibility to maintain the berms and swales or whether SPUC would be the only non-POA property with which the POA would have been responsible for seeing that maintenance was performed. This also is nothing but attempted testimony by counsel for the Utility. He should not label it as

a motion but as his pre-filed testimony so that he will be subject to cross-examination.

c. Counsel for the Utility again attempts to testify as to bonding of improvement requirements in Martin County as well as all over the nation, and whether builders of private residences must post bonds in Martin County. This is testimony and/or final argument. It is inappropriate as a basis for a motion in limine.

d. This subparagraph contains nothing but more attempted testimony and final argument by counsel for the Utility in an attempt to insert his unsupported facts and conclusions at this point in this proceeding which is inappropriate. After all the evidence is in and there are facts to support such arguments it may become appropriate, but not now.

e. The Intervenors have already explained that the purpose of the testimony and the documents of title are to prove that the Utility does not own some of the improvements which it seeks to include in rate base and that those which it owns were contributed to it by the developer as CIAC. The testimony and exhibits offered in support thereof are clearly relevant to those issues.

f. This is but a continued effort on the part of the Utility to ignore that issues of ownership of the improvements and CIAC are involved in the Intervenor's testimony.

6. The witness testified that he is an owner at Sailfish Point and that prior to signing his contract of sale he was required to read the documents which affect the ownership of and

maintenance responsibilities of various entities within Sailfish Point as regards utilities and other matters. He has identified the title documents which describe and control those issues. He has also identified all subsequent documents that amend or affect the documents which were in existence at the time he purchased to demonstrate that those documents did not alter or affect the conclusions he reached as an owner. He is testifying as a fact witness who has an ownership interest in all the property to be conveyed to the POA. He certainly is entitled to bring to this commission's attention the fact that this Utility is attempting to include in its rate base property which is currently owned by the developer and which the developer is obligated to convey to the POA and not to SPUC. To the extent the Developer may have attempted to convey ownership interest in that property to SPUC, such conveyance would be inappropriate and in contravention of the title documents. There has been no showing that only an expert can understand the language set forth and expressed in the documents attached as exhibits to the testimony of the witness, Rasmusen. The matters of ownership of the improvements attempted to be included in rate base and CIAC are clearly within the jurisdiction of this commission.

7. This paragraph is nothing but an attempt to re-argue the same issues raised by the Utility in its objection to the Petition for Intervention. The Commission has already ruled upon that Petition. It is inappropriate for the Utility to attempt to raise those same issues by way of verbatim incorporation into this Motion

and Intervenors will make no response to such attempted verbatim incorporation except, to the extent any response is necessary, they incorporate their previous responses to the Utility's objections to their Petition for Intervention.

8. Any documents which the Utility contends to convey an ownership interest to it of improvements located at Sailfish Point should be identified and attached as exhibits to rebuttal testimony by the Utility and not attempted to be interjected as evidence in these proceedings via an attachment to a motion or by testimony of Utility's counsel in a motion.

**CONCLUSION**

For the reasons stated above in response to each numbered paragraph, the Utility's Motion should be denied.

Respectfully submitted this 3/5 day of May, 1991.

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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 900816-WS**

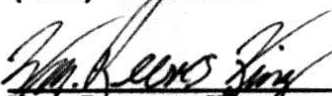
I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail, to the following parties on this 3/5 day of May, 1991.

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