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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:  
June 25, 1991

**ORIGINAL  
FILE COPY**

**RESPONSE OF INTERVENORS' TO UTILITY'S SUPPLEMENT TO  
MOTION TO STRIKE  
ADDENDUM AND TO STRIKE ALL PRE-FILED  
TESTIMONY AND EXHIBITS OF ROGER W. RASMUSEN  
AND INTERVENOR'S MOTION TO STRIKE  
ADDITIONAL AND SECOND REBUTTAL TESTIMONY OF  
FRANK SEIDMAN FILED JUNE 18 AND 20, 1991 RESPECTIVELY**

In response to the Utility's Supplement to Motion to Strike Addendum and to Strike all Pre-Filed Testimony and Exhibits of Roger W. Rasmusen, which was served on June 20, 1991, and in support of Intervenor's Motion to Strike Additional and Second Rebuttal testimony of Frank Seidman filed June 18 and 20, respectively. Intervenor show the Commission:

1) Intervenor were informed by Staff Counsel that RWR-6, the Addendum to the Testimony of Roger W. Rasmusen which identified the portions of the Rasmusen Exhibits as required by the Pre-Trial Order, failed to identify the issues to which those documents related. The Commission directed that the issues should be identified prior to the close of business on June 19, 1991. By penned-in notations, the Intervenor indicated that the documents listed on RWR-6 related to issues numbered 4 & 5<sup>1</sup>. Issues 4 & 5 on RWR-6 were intended to apply to the numbering system used on the proposed Pre-Trial Order. Those issues are now numbered 3 & 4 on the actual Order entered.

<sup>1</sup>Intervenor received the actual pre-hearing order on June 21, 1991. The numbering the of issues on that Order differs from the proposed Order with which the parties were working at the pre-hearing conference.

DOCUMENT NUMBER-DATE

06421 JUN 26 1991

FPSC-RECORDS/REPORTING

Utility has now filed this Supplement to its earlier motion which was addressed in Order 24681 dated 6/19/91. That Order required Intervenor's to specify the issues to which the documents listed upon the RWR-6 Addendum were relevant. That Order was complied with. The Utility now files a Supplement to that Motion which adopts and restates the original Motion. In addition, the Supplement addresses the modified addendum on which the specific issues were listed and states that the pages identified on that Addendum are not relevant to the issues identified thereon. As further grounds for support its motion, the Utility adopts and incorporates its April 9, 1991 Motion to Strike Response of Sailfish Point Property Owners Representatives and Charles R. Buckridge to Utility Objection for Leave to Intervene, as well as the 81 pages of Exhibits previously filed with that April 9 Motion.

The Intervenor's responded to that April 9, 1991 motion and pointed out that it was nothing more than an attempt by the Utility to obtain a pre-adjudication of the merits of the matters which the Intervenor's desired to present upon trial without the benefit of witnesses subject to cross-examine and by self-serving statements of counsel under the guise of a Motion.

That April 9, 1991 Motion of the Utility was disposed of in Order 24486 dated 5/7/91 which granted the Motion for Leave to Intervene and denied the Motion to Strike and Motion to Deny Petition for Leave to Intervene.

We have now come full circle. The Utility seeks to reincorporate the 81 pages attached to its April 9, 1991 Motion,

47 pages of which include the entire Declaration of Protective Covenants and Restrictions for Sailfish Point and portions of the First and Fourth Amendments thereto. These are the same documents to which the Utility sought to strike on the grounds that the Intervenor had failed to specify the provisions upon which they intended to rely.

Not only has the Utility adopted that Motion which has already been ruled upon but its witness, Seidman, in his Second Additional Rebuttal Testimony states that he is compelled to take the unusual step of adopting as a part of his testimony the numbered paragraph and exhibits of the Utility's April 9, 1991 Motion. He also adopts as his testimony the numbered paragraphs of the Utility Objection to the Petition for Leave to Intervene which was filed on March 21, 1991.

There is absolutely no issue as to the relevancy of Witness Rasmusen's testimony to issues 3 & 4. Those issues are whether the utility facilities lying within the Utility Parcel and the utility facilities lying outside of the Utility Parcel on other Sailfish Point property should be treated for regulatory purposes as CIAC.

Issues of CIAC are clearly within the exclusive jurisdiction of the Commission. The Utility's own expert, Mr. Seidman, admitted that if the Developer donated all of the utility plant and distribution and collection lines to aid the Developer's real estate sales, they should receive regulatory treatment as CIAC for rate base purposes. He acknowledged that the issue of CIAC treatment is a matter clearly within the jurisdiction of the

Commission. (See attached pages 54 - 56 of transcript of Deposition of Seidman May 29, 1991.)

While the Intervenor may have included in their Petition for Intervention issues which they had been denied the right to address in these proceedings such as the issue of title to the utility facilities, whether based upon some future event, the Utility may be exempt from Commission jurisdiction and SPOR's economic interest as they relate to possible future ownership of the Utility; the Petition also addressed the issues of CIAC. The Utility has known since at least the 9th day of May when the testimony of Rasmusen and the Exhibits were filed the exact intentions of the Intervenor. Rasmusen states on page 20 beginning at line 12,

"In my opinion, those references are entirely consistent with and support my conclusion that the capital cost of the water and waste water treatment facilities and the water distribution and waste water collection lines were to be contributed by the Developer as a part of the infrastructure at Sailfish Point."

Although Mr. Rasmusen may not have used the phrase "Contribution In Aid of Construction" the Utility's own expert admits that if his opinion is correct it would result in a zero rate base and is clearly information which this Commission must consider in determining the issue of rate base.

The CASR required the Utility to provide rebuttal testimony by May 31. The sole rebuttal testimony furnished by that date with relation to the issues addressed by the pre-filed testimony of Rasmusen consisted of the opinion of Mr. Seidman that the utility facilities were owned by the Utility. He attached a copy of Special Warranty Deed to his testimony and stated that until a

Court declares that Deed to be invalid, he is required to rely on it in preparation of the MFRs and in determining rate base of the Utility.

The Utility offered no rebuttal testimony to the opinion expressed by the witness Rasmusen that the cost of the Utility improvement were to be contributed by the Developer as a part of the infra-structure at Sailfish Point.

The Utility via its Motion to Strike now attempts to interject rebuttal testimony consisting of unsworn statements of counsel for the Utility and development documents already included by the Witness Rasmusen but to which the Utility has objected for failure to specify the exact provisions deemed to be relevant. This is a blatant "bootstrap" attempt by the Utility to place in the record rebuttal testimony based upon the Intervenor's as an after-the-fact determination by the Utility that such testimony is now needed.

It is simply too late for the Utility to offer rebuttal evidence under the pretense it is necessary to support a Motion to Strike. Obviously, the Utility was sufficiently aware of the positions which the Intervenor's were likely to assert when it filed its Motion on April 9, 1991. That Motion and the exhibits, which it now attempts to incorporate into its expert's testimony, predated the pre-filed testimony and exhibits of Rasmusen. It is obvious that the Utility did not need the Addendum to Rasmusen's exhibits to understand the issues which the Intervenor's desired to raise in this proceeding because it addressed those in the April 9, 1991 Motion.

The additional rebuttal testimony of Seidman submitted for filing June 18, 1991 and the Second Additional rebuttal testimony of Seidman filed June 20, 1991 are nothing but continued arguments of the issues which were previously resolved adversely to the Utility by the Commission's Order #24486 dated 5/7/91.

#### CONCLUSION

The Utility's Supplement to Motion to Strike submitted on June 20, 1991 and Motion to Strike submitted on June 18, 1991 should be denied. The additional rebuttal testimony of Seidman submitted for filing on June 18, 1991 and second additional rebuttal testimony of Seidman submitted for filing June 20, 1991 should be stricken as untimely and as being nothing more than re-argument of issues which have already been decided adversely to the Utility.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to Ben E. Girtman, Esquire, 1020 East Lafayette Street, Suite 207, Tallahassee, Florida 32301 by hand delivery; Stephen C. Reilly, Esquire, Office of Public Counsel, 111 West Madison Street, 812 Claude Pepper Building, Tallahassee, Florida 32399-1400 and by facsimile; and, Catherine Bedell, Esquire, PSC

Commission, Division of Legal Services, 101 East Gaines Street,  
Tallahassee, Florida 32399-0873 and by facsimile, this 25<sup>th</sup> day  
of June, 1991.

Respectfully submitted,

ST. JOHN & KING  
Attorneys for Intervenors  
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By: 

William Reeves King  
Florida Bar No.: 747319

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JUN 12 1991

Office of  
**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application of SAILFISH  
POINT UTILITY CORPORATION for a  
rate increase in Martin County.

DOCKET NO. 900816-WS

**RECEIVED**  
Division of Records & Reporting

JUN 7 1991

Florida Public Service Commission



DEPOSITION OF: **FRANK SEIDMAN**

TAKEN AT THE INSTANCE OF: **The Florida Public Service  
Commission**

DATE: **Wednesday, May 29, 1991**

TIME: **Commenced at 10:00 a.m.  
Concluded at 11:30 a.m.**

LOCATION: **Room 219  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida**

REPORTED BY: **JANE FAUROT  
Notary Public in and for the  
State of Florida at Large**

ACCURATE STENOGRAPHY REPORTERS, INC.  
100 SALEM COURT  
TALLAHASSEE, FLORIDA 32301  
(904) 878-2221



1 specifically reference sewers, collection sewers, force and  
2 gravity?

3 A I believe it references sewer lines and pumps. I  
4 don't know if it broke it down between force and gravity.

5 Q Okay. Is that something that you could furnish me a  
6 copy of, that deed? I, obviously, have never seen it.

7 A Yes, sure.

8 Q Okay. Would you agree that, for hypothetical  
9 purposes for a minute, if you had been provided a document that  
10 said, "The developer will install, and maintain, and retain  
11 title to all collection and distribution lines and mains until  
12 1992, when you will then convey those improvements to the POA,  
13 will be obligated to accept them and thereafter maintain them,  
14 and hold title to them." If you had such a document, would  
15 that be something that would be important to you in making the  
16 analysis that you have made and testified about?

17 A The important thing to me is that -- whether or not  
18 there is an indication of ownership of the utility.

19 Q So, the ownership of it is important to you?

20 A Yes.

21 Q And you would agree if the Utility doesn't own  
22 certain assets, which is listed as plant in service, then they  
23 should not be included in the capital structure of the rate  
24 base?

25 A If the utility doesn't own the assets, I guess, it

1 would have to lease the assets. It has got to have some  
2 ability --

3 Q People can give things to people, can't they?

4 A Well, then, you own it. It is just a question of  
5 price.

6 Q All right. So, you would say if it had been donated,  
7 that they would be entitled then to receive a return on it?

8 A No, I just say if they -- whether they receive the  
9 assets through a donation or through a purchase, they have  
10 ownership.

11 Q Okay. And you say it would make no difference in  
12 your analysis as to how that -- what the consideration was for  
13 that transfer?

14 A I don't think I am following you.

15 Q Suppose, for instance, that we had some generous  
16 benefactor who had said, I don't like the water that we have to  
17 get from Martin County and want to have our own system. And,  
18 here, I give you \$5 million, and I want to install a system,  
19 and I give it to you then?

20 A Then that would be considered a contribution in aid  
21 of construction.

22 Q Okay. So then -- and what would be the effect on the  
23 rate base then in treating it that way?

24 A The rate base would be zero.

25 Q Okay. So, if the developer here, in effect, says, "I

1 want to give to this development for the purposes of helping me  
2 aid my real estate sales, all of this plant." And if we -- if  
3 that is the fact, and assume that is the fact, then the result  
4 would be treating that all as a contribution in aid of  
5 construction, is that correct?

6 A In your hypothetical, if the assumption is that the  
7 property is donated, then it is considered a contribution.

8 Q And in your experiences, is the Commission involved  
9 with dealing with whether something is a contribution in aid of  
10 construction or not?

11 A Yes, it is.

12 Q And in your experience, then, the question of title  
13 and the manner in which, or the consideration that was given  
14 for that title would be an important factor in making that  
15 determination, would it not?

16 A That's correct.

17 Q Do you know whether you have included in the plant in  
18 service any portions of the irrigation systems that are located  
19 at Sailfish Point?

20 A The irrigation system is not included.

21 Q And why was that not included?

22 A It is not part of the Utility's property.

23 Q And was that a decision you made in preparing these  
24 things, or was that information that was furnished to you by  
25 somebody else, namely the developer?