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March 29, 1991

**ORIGINAL
FILE COPY**

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

**RE: Application for Sailfish Point Utility Corp. for a rate
increase in Martin County; Document No: 900816-WS;
Submitted for Filing: March 29, 1991**

Dear Mr. Tribble:

Enclosed please find original and twelve (12) copies of a
Response of Sailfish Point Property Owners Representatives and
Charles R. Buckridge to Utility Objections to Intervention.

Sincerely yours,

Wm. Reeves King
WM. REEVES KING
For the Firm

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- WRK/kl
- EAG Enclosures
- LEG cc: Association
- LIN Catherine Bedell, Esquire
- LIN Jack Shreve, Esquire
- OPC Ben E. Girtman, Esquire
- 31170103.29
- RCH
- SEC
- WAS
- OTH

DOCUMENT NUMBER-DATE

03141 APR -1 1991

PSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Rate Increase) Docket No.: 900816-WS
in Martin County by SAILFISH POINT) Submitted
UTILITY CORPORATION) for filing: March 29, 1991

**RESPONSE OF SAILFISH POINT PROPERTY OWNERS REPRESENTATIVES
AND CHARLES R. BUCKRIDGE TO UTILITY OBJECTION TO
PETITION FOR LEAVE TO INTERVENE**

Sailfish Point Utility Corporation, the Petitioner, has filed an Objection to Intervention by Sailfish Point Property Owners Representatives (SPOR) and Charles R. Buckridge. That Objection basically states two grounds:

1. Neither SPOR nor Mr. Buckridge has any interest separate and distinct from the customers as a whole and their intervention will unnecessarily increase the rate case expenses; and,

2, There is no indication that SPOR or Mr. Buckridge are authorized to act for any group.

With regard to the first grounds for objection, the intervenors allege that they have substantial interests which will be determined in this proceeding which are separate and apart from the interest that each rate payer has by virtue of being a customer of the Utility. That differing interest derives from the relationship of the intervenors to the Sailfish Point Property Owners and Country Club Association, Inc. (POA) and from the POA's relationship to the Utility by virtue of both entities being subject to and governed by provisions of the Declaration of Covenants and Restrictions for Sailfish Point; and by the further fact that both the POA and SPUC are presently controlled by the Developer who constructed the water and wastewater treatment

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facilities pursuant to provisions of the Declaration of Covenants and Restrictions for Sailfish Point and the Planned Unit Development Zoning Agreement with Martin County. Those documents have specific provisions regarding the ownership and responsibilities for maintenance of the facilities which SPUC seeks to include as a part of its rate base.

The POA is the organization charged with responsibility under the Declaration for compliance with the provisions of the Declaration and the provisions of any permit issued to any entity operating within Sailfish Point by any governmental agency, including the Department of Environmental Regulation. SPUC operates under permits issued by the DER which require discharge of certain effluents into the lakes, lagoons and inland harbors for which the POA has operation and maintenance responsibility. The POA also has responsibility for operation and maintenance of the irrigation system located throughout Sailfish Point, except the system used to irrigate the golf course.

The Declaration specifically requires the Developer to maintain all property that it owns; the POA to maintain the water management system, the Common Areas and the Country Club and for SPUC to maintain only those improvements located on the Utility Parcel. The Utility Parcel is the real estate upon which the water and wastewater treatment plants are located. It does not include any wastewater collection or water distribution lines. Those lines have been installed in areas which are proposed to be conveyed by the Developer to the POA as Common Areas.

The Declaration defines Common Areas by reference to title to real estate rather than describing specific parcels or areas of real estate containing specific improvements such as roads, canals, etc.

The Declaration further provides that the Developer retains title to all Common Areas until it elects to transfer title to those areas to the POA or until 543 residential units within Sailfish Point have been conveyed. The POA is obligated by the Declaration to accept conveyance of the Common Areas from the Developer. Upon conveyance of the Common Areas to the POA, the Declaration provides it has obligations for the maintenance of those Common Areas. The definition of Common Areas in the Declaration includes all improvements constructed thereon or therein. Until conveyance of the Common Areas to the POA, the Developer, as title holder of that property, is required by the Declaration to maintain that property.

Intervenors contend that it is the responsibility of the POA to ensure that the property owned by the Developer which is to be conveyed to the POA is not wrongly conveyed by the Developer to SPUC and included as a part of the rate base in this proceeding. However, since the POA is still controlled by the Developer and since it is in the Developer's interest for SPUC, which is wholly owned by the developer, to claim as much property as it can so as to increase the rate base. The more property claimed to be owned and to be maintained by SPUC the less the Developer's responsibility for maintenance of such property. Additionally,

after conveyance of the Common Areas to the POA, the Developer, as the owner of unimproved lots within Sailfish Point, still must participate in the cost of maintenance of those facilities by way of assessments levied by the POA even though maintenance is the POS's responsibility.

Additionally, the Declaration provides that the Developer owns the Utility Parcel but may elect to convey it to SPUC, the POA or any government entity.

In sales information statements published by the Developer, representation is made that conveyance of the Utility Parcel and the water and wastewater treatment plant thereon has been made to SPUC but that the Developer, at its option but not later than December 31, 1995, will convey the Utility Parcel or the stock of SPUC to the POA, to Martin County or to some third party utility. It further states that if Developer elects to make such conveyance or transfer to the POA, it shall be obligated to accept such conveyance.

Intervenors contend that the provisions of the Declaration do not permit the Developer to convey the Utility Parcel or the facilities constructed thereon to some third party utility. The only transferees of the Utility Parcel permitted by the Declaration are SPUC, the POA or a government entity. The Developer has announced its intention to transfer the Utility Parcel from SPUC at least by December 31, 1995. It is authorized to make such transfer only to the POA or to a government entity. In either of those events, the SPUC would no longer be within the

jurisdiction of this Commission.

Intervenors believe that SPUC must prove it is the owner of the assets which it seeks to have included in the rate base; that the maintenance expenses it shows were incurred in maintaining SPUC property not property of the Developer or of the POA; and that the construction cost it claims to have incurred were incurred by it for improvements it owns not improvements which were installed by the Developer as a part of the infra structure of Sailfish Point.

An understanding and appreciation of the interrelationship of the development documents and their effects upon ownership and maintenance responsibilities of portions of the utility facilities involved in these proceedings are matters which are peculiarly related to this development and are not of the type usually encountered by Public Counsel in its general representation of the rate payers and customers of this Utility who also happen to members of the POA. Since the Developer controlled POA has no incentive to participate in these proceedings because the Developer's interest are identical to the interest of its alter ego - SPUC presentation of the issues raised by intervenors does not serve the Developer's interest. Thus, the only parties who are adversely affected by the application of SPUC and its violation of the Declaration, are the Sailfish Point owners who are members of the POA and who will ultimately bear the responsibility for operation and maintenance of all property within the development whether it be by

assessments via the POA or by charges from the Utility. They will not have their interests represented unless this Petition for Intervention is granted.

As to issue number two, intervenors are the proper parties to represent the interests discussed above. The provisions of the Declaration authorize the Class A Members of the POA (non-Developer owners) to elect directors to the board of the POA. However, until the Developer has chosen to convey the Common Areas to the POA or until 543 residential units within Sailfish Point have been conveyed, the Declaration gives the Developer the right to elect a majority of the directors.

The annual election of the POA was held on March 22nd pursuant to the provisions for elections set forth in the Declaration, Articles and Bylaws of the POA. Those provisions require the mailing of notices and ballots to all owners at Sailfish Point. As a result of those elections, Mr. Charles R. Buckridge was reelected as a Director of the POA, as were Hugh K. Stevenson and Philip Sendel. In addition to those Directors, twelve other owners at Sailfish Point were elected to serve as Sailfish Point Owners Representatives by that same election process and procedure.

The governing documents do not officially provide for election of the twelve members to serve on SPOR. However, for at least the past three years the non-Developer owners have chosen to elect the SPOR Committee, as it is called, who, together with the three non-Developer owner elected POA Directors, function as

an Ad Hoc Committee who represent the interest of all of the non-Developer owners at Sailfish Point in matters of interest to all such owners. A copy of the list of members of the SPOR Committee which were elected via the election process completed on March 22, 1991 is attached as Exhibit A hereto.

The SPOR Committee has been actively engage in negotiations with the Developer regarding "turn-over" issues including conveyance of SPUC to the POA and causing its deregulation. Those negotiations are on-going but agreement has not been reached. The SPOR Committee has engaged the undersigned counsel to assist them in dealing with the legal issues involving all aspect of the turn-over including the participation in this rate case.

This rate case is inextricably intertwined with and is a major part of the "turn-over" issues to be resolved. The Developer has already announced its election not to continue operation of the utility facilities beyond December 31, 1995. This rate proceeding is an attempt to include in the rate base of the utilities all possible property which the SPUC can claim to be owned by it in order to justify the most exorbitant rate possible and thereby force the SPOR Committee to accept transfer of the utilities to the POA at a value far in excess of the actual value of the utility.

In conclusion, intervenors believe that they represent the real parties and interest in this rate proceedings which is not SPUC, but the members who will control the POA which has quasi

equitable title to and in all probability will become owner and operator of the utility facilities which are the subject of this rate case. The issues involved are peculiar to this facility as a result of its requirement to be owned, operated, maintained and conveyed only in accordance with the provisions of the Declaration of Covenants and Restrictions.

Because of the short time prior to this hearing; the fact that there has been eight amendments to the Declarations of Covenants and Restrictions and twenty-four amendments to the PUD Zoning Agreement and more than fifteen Supplementary Declarations of Covenants and Restrictions which affect various parcels of property and were recorded when the plats of such parcels were recorded, Public Counsel should not be required to and does not have the staff to involve itself in this case to the extent that it can assimilate those documents and properly present the issues peculiar to this case created by those documents.

Intervenors will be concentrating on the issues resulting from the development documents and not upon the other issues being addressed by Public Counsel. For those reasons intervenors do not believe that their participation will unnecessarily increase the rate case expenses as stated by the Utility in its Objection to the Petition for Intervention. The issues which the intervenors seek to raise in these proceedings may increase the rate case expenses because the Utility has chosen to claim rate base costs and expenses which it is not entitled to claim. No doubt it would prefer not to address those issues and thereby

save expense.

For the reasons stated, intervenors believe they have clearly demonstrated that they are duly elected representatives of the members of the Sailfish Point Property Owners and Country Club Association, Inc. and have a unique substantial interest which will be affected by these proceedings.

Respectfully submitted this 29th day of March, 1991.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been set to Mr. Stephen C. Reilly, Office of Public Counsel, 111 West Madison Street, 812 Claude Pepper Building, Tallahassee, FL 32399-1400, Ben E. Girtman, Esquire, 1020 East Lafayette Street, Suite 207, Tallahassee, FL 32301, and Catherine Bedell, Esquire, Florida Public Service Commission, Division of Legal Services, 101 East Gaines Street, Tallahassee, FL 32399-0873 by U.S. Mail, this 29th day of March, 1991.


Wm. Reeves King

SPOR DIRECTORS AND REPRESENTATIVES

1991-1992

<u>NAME</u>	<u>S.P. TELE. #</u>	<u>MAILING ADDRESS</u>	
Mr. Charles R. Buckridge	225-1149	6719 S.E. South Marina Way Stuart	Florida 34996
Mr. Maurice J. Casey	225-2767	2804 S.E. Dune Drive. #1209 Stuart	Florida 34996
Mr. Dean W. Crawford	225-4452	2001 S.E. Sailfish Point Blvd.. #413 Stuart	Florida 34996
Mr. Michael G. Duerr	225-4409	2814 S.E. Dune Drive. #2212 Stuart	Florida 34996
Mr. Garland T. Duke	225-1069	6760 S.E. South Marina Way Stuart	Florida 34496
Mr. Jeff Jaffe	225-1425	6520 S.E. Harbor Circle Stuart	Florida 34996
Mr. John H. Kennedy		6680 S.E. South Marina Way Stuart	Florida 34996
Mr. Donald E. Lane	225-6251	2802 S.E. Dune Drive. #1112 Stuart	Florida 34996
Mrs. Sonia Nelson	225-6416	6939 S.E. Harbor Circle Stuart	Florida 34996
Mr. Louis G. Peloubet	225-3630	6981 S.E. Harbor Circle Stuart	Florida 34996
Mr. Roy T. Perraino	225-3889	2160 S.E. Golfview Lane Stuart	Florida 34996
Mr. Roger W. Rasmussen	225-1832	2001 S.E. Sailfish Point Blvd.. #417 Stuart	Florida 34996
Mr. Philip H. Sendel	225-4643	6741 S.E. Harbor Circle Stuart	Florida 34996
Dr. Arnold E. Simon	225-2048	2802 S.E. Dune Drive. #1111 Stuart	Florida 34996
Mr. Hugh K. Stevenson	225-2320	6529 S.E. South Marina Way Stuart	Florida 34996

EXHIBIT A