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August 6, 1991

**ORIGINAL FILE COPY**

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: 900015-MS; Submitted for Filing: August 6, 1991**

Dear Mr. Tribble:

Enclosed please find original and twelve copies of the Response of Intervenors Sailfish Point Property Owners Representatives and Charles R. Buckridge to Utility's Motion to Strike Brief or SPOR or Alternatively to File a Reply Brief.

- ACK   ✓
- AFA   2
- APP
- CAF
- CMU
- CTR
- EAG
- LEG   1
- LIN   2
- OPC
- RCH
- SEC   1
- (WAS)**
- OTH

Sincerely yours,

*Wm Reeves King / lck*  
WM. REEVES KING  
For the Firm

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FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: Application of SAILFISH ) Docket No.: 900816-WS  
POINT UTILITY CORPORATION for ) Submitted  
a rate increase in Martin County ) for Filing: August 6, 1991

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**RESPONSE OF INTERVENORS.**  
**SAILFISH POINT PROPERTY OWNERS REPRESENTATIVES**  
**AND CHARLES R. BICKRIDGE**  
**TO UTILITY'S MOTION TO STRIKE BRIEF OF SPOR**  
**OR ALTERNATIVELY TO FILE A REPLY BRIEF**

The Mobil parents of SPUC obviously do not like having their development decisions questioned, especially by a group of purchasers like SPOR. The tactics used in this proceeding by their utility step-child are typical of those used by powerful corporations whose will is opposed. The tactic is to make it as costly as possible upon all those who have the gall to oppose them. This Motion of SPUC, hopefully the last of many, is a classic example.

SPUC seeks to have the Intervenor's brief stricken. If granted, the effect would be to dismiss the intervention. Does that sound familiar? SPUC first moved to deny intervention. When that was denied, it moved to strike the testimony of Rasmussen and to strike all exhibits. Having failed in all of those attempts, it is still not satisfied. It now moves to strike Intervenor's brief or alternatively for SPUC to have the last word via a Reply Brief.

Surely one would expect that a request for such harsh sanctions are based upon serious transgressions. What is SPOR

accused of? When analyzed properly, all accusations stem from Intervenor's failure to present their evidence in the manner desired by SPUC's counsel. Throughout this proceeding, SPUC's counsel has insisted that Intervenor's must cite by paragraph and line each portion of the documentary evidence upon which they intend to rely. Such specificity is required by no rule of this Commission and no rule of evidence but was sought to be imposed upon SPOR by motion of SPUC. Those motions were denied. Refusing to accept those denials, SPUC continues to raise the issue; again, in the guise of a Motion to Strike!<sup>1</sup>

The specific Transgressions According To Girtman are:

(1) Failure to adequately identify portions of the documents which SPOR seeks to rely upon.

(2) Citing portions of documents in the Brief which were not included in the index list identifying the documents to be relied upon.

Transgression Number 1 has been addressed at least twice before in rulings of this Commission. SPOR identified its documentary exhibits as required by this Commission. Those documents were admitted in evidence. The alleged transgression is specious, re-argues a lost position and is based upon personal pique of SPUC's counsel. It should have no place in these proceedings. Its only value is evidence of the oppressive tactics continued to be used by SPUC and its parents against Intervenor's in this proceeding.

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<sup>1</sup>Surely, by now the Commission perceives the pattern of SPUC's actions.

Transgression Number 2 is supported by three specified "examples". They will each be identified and discussed.

(a) **The Accusation:** SPOR's brief refers to Exhibit 5, Page 62, Paragraph 1 which paragraph is not identified in the index.

**The Response:** Page 62 of Exhibit 5 is a portion of the PUD Zoning Agreement. The page and Paragraph 2 were identified on the index. That page also includes Paragraph 1. Exhibit 5 was admitted in evidence (T-134-135). Paragraph 1 is cited in support of a statement of fact that is really not in issue - that the PUD Zoning Agreement recited that SPI had created a Declaration which was made a part of that agreement and provided for the establishment of the Association to maintain, operate and manage the Common Areas. Paragraph 2 of that document, which was cited, makes reference to those Covenants and Restrictions.

SPUC makes no contention that the facts supported by that citation are erroneous; are harmful to its position; or adversely affect it in any way. SPUC's sole objection to the admissibility of Exhibit 5 was that the documents contained in it were totally irrelevant to these proceedings. (T-132-133).

**(b) The Accusation:** SPOR's brief refers to page 65 of Exhibit 5 which was not included in the index.

**The Response:** The only place on which Page 65 of Exhibit 5 is cited is in support of the statement of fact in the last full paragraph of Page 3 of SPOR's brief. The index list refers only to page 8 of the PUD Zoning Agreement which is page 64 of Exhibit 5. Page 65 of Exhibit 5 is page 9 of the PUD Zoning Agreement. It evidently was inadvertently included in Exhibit 5 during the copying process. Because it was included, was in evidence, and contained portions of Paragraph 1, the brief also included that page in the citation. Should the Commission conclude that only those portions of Exhibit 5 which were also identified in the index have been admitted in evidence, it can simply ignore Page 65.

**(c) The Accusation:** Page 5 of SPOR's brief refers to Paragraphs 2D, and 2E of page 102 which were not included in the index.

**The Response:** Page 102 of Exhibit 5 is a portion of the Second Amendment to the PUD Zoning Agreement. The offending paragraphs authorized the construction of the Maintenance

Facility upon Parcel C-2 of Plat No. 1-A and construction of the Telephone Facility on Parcel C-3 of Plat No. 1-A. Although not referred to in the index, they are part of Exhibit 5 in evidence. Again, SPUC makes no contention of harm or that the facts supported by that cite are not true. The reference was made to illustrate that construction of utility facilities other than those related to water and waste water were undertaken by the Developer after approval by the County. If the Commission concludes that only those portions of Exhibit 5 which were identified on the index were admitted in evidence, then it should simply strike the last sentence of the offending paragraph on Page 5 of SPOR's brief and ignore Paragraphs 2D and 2E on Page 102 of Exhibit 5 during its deliberations.

#### **CONCLUSION**

The Transgressions According To Girtman are clearly not of the type which warrant striking SPOR's brief or giving SPUC an opportunity to file a reply brief. SPUC has not stated why it needs to reply other than to respond to the information which "SPOR has so diligently avoided presenting in the evidentiary process".

It does not allege that those transgressions by SPOR might mislead or confuse this Commission in its deliberations. If past practice

is a teacher, SPUC's reply will only rehash arguments previously made and decided adversely to it.

SPOR has been completely forthcoming in the presentation of its evidence. Its position is based upon the development practices of SPI as reflected in the development documents prepared by SPUC's parent. SPUC chooses to disassociate itself from all knowledge of and connection with its parent as to issues raised by SPOR; yet, it presents accounting and cost evidence as if SPI, SPUC and other Mobil entities were one.

If SPOR is guilty of anything, it is of being too zealous in citing record support for its statement of facts. Maybe it should have followed SPUC's format of making statements of fact by way of motion and brief, completely unsupported by record evidence. For example, the reference on page 27 of SPUC's brief as to the requirements of Martin County re: donation of utility facilities to customers is totally dehors the record. Likewise are the statements on page 29 which contain the citation (Tr\_\_\_) and the statements on Page 11 about the extent of water plant in service and waste water plant in service as shown on Exhibit 2. Those are but some examples.

Citing as fact matters which are not supported by any evidence in the record seems much more unfair, detrimental and procedurally incorrect than referencing matters of record which were not included in a pre-trial exhibit. Therefore, if the Commission

should be persuaded by SPUC's position, SPOR requests that SPUC's brief be given equal treatment and the same sanctions meted to it.

Pragmatically, the Commission should not involve itself in striking portions of briefs for the reasons raised by SPUC. If it does, it will merely afford all parties another opportunity to get in the last word - an opportunity which will be readily seized by lawyers and will result in a never ending series of briefs. That process is one in which SPOR and its counsel will not indulge.

The Motion should be denied.

Respectfully submitted this 4th day of August, 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 6th day of August, 1991.

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