

M E M O R A N D U M

July 17, 1998

TO: DIVISION OF RECORDS AND REPORTING (BAYO)
FROM: DIVISION OF LEGAL SERVICES (REYES) *BLR*
RE: DOCKET NO. 961006-WS - APPLICATION FOR CERTIFICATES UNDER GRANDFATHER RIGHTS TO PROVIDE WATER AND WASTEWATER SERVICE BY SPORTS SHINKO UTILITY, INC. D/B/A GRENELEFE UTILITES IN POLK COUNTY.

Please place the attached Settlement Agreement dated July 16, 1998, in the docket file.

BLR/lw

Attachment

cc: Division of Water and Wastewater (Walker, Redemann)

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
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LSC _____
LSP _____
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DOCUMENT NUMBER-DATE

07592 JUL 20 88

FPSC-RECORDS/REPORTING

SETTLEMENT AGREEMENT

The parties, SPORTS SHINKO UTILITY, INC., D/B/A GRENELEFE UTILITIES (hereinafter "GRENELEFE UTILITIES") and GRENELEFE ASSOCIATION OF CONDOMINIUM OWNERS No. 1, INC., (hereinafter "CONDO ASSOCIATION"), stipulate and agree as follows:

RECITALS

WHEREAS, GRENELEFE UTILITIES is a utility located at 3200 State Road 546, Haines City, Florida 33844;

WHEREAS, the CONDO ASSOCIATION is a Florida Corporation representing the interests of a large number of individual residents of Grenelefe Golf and Tennis Resort community, located at 3200 State Road 546, Haines City, Florida 33844;

WHEREAS, GRENELEFE UTILITIES' then existing potable water rates and charges were grandfathered in by the Florida Public Service Commission ("PSC"), pursuant to the PSC Order of December 29, 1997, Order No. PSC-97-1546-FOF-WS ("the Order"). The Order also invalidated the then existing non-potable water service rates and charges and ordered a full refund. GRENELEFE UTILITIES timely filed its Petition on proposed Agency Action/Petition For Formal Proceedings on December 29, 1997, Docket No. 961006-WS, contesting the findings by the PSC relating to non-potable water services. The CONDO ASSOCIATION subsequently timely filed its Petition to Intervene on March 2, 1998; and was granted intervenor status;

WHEREAS, GRENELEFE UTILITIES is currently charging the temporary rates pursuant to Order No. PSC-98-0503-PCO-WS, entered April 13, 1998, as follows:

Gallonge Charge	(0 - 25,000 gallons)	\$1.44
(per 1,000 gallons)	(25,000 + gallons)	\$2.16
Base facility Charges		
All Meter Sizes		\$5.50

WHEREAS, both GRENELEFE UTILITIES and the CONDO ASSOCIATION desire to amicably resolve this dispute before the PSC and all other claims that the parties may have against one another arising from or in connection with the matters before the PSC;

WHEREAS, both GRENELEFE UTILITIES and the CONDO ASSOCIATION and PSC Staff met on April 15, 1998, for the purposes of an informal Settlement Conference, upon due notice of same by the PSC Staff, to resolve these issues and to facilitate the resolution of this dispute without the need for further litigation and have been engaged in ongoing discussions from that date to accomplish same.

NOW, THEREFORE, in full consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, GRENELEFE UTILITIES and the CONDO ASSOCIATION agrees to the following Terms and Conditions:

TERMS AND CONDITIONS

1. All of the foregoing Recitals are true and are incorporated as part of these Terms and Conditions.
2. The non-potable irrigation water rate shall be assessed at the gallonage charges specified by the PSC (\$0.61/1000 gallons) in the December 9, 1997, Order, (Order No. PSC-97-1546-FOF-WS), retroactive to GRENELEFE UTILITIES' initial billing period (i.e., September 1996) usage.
3. The conservation-based incline block rate structure for gallonage charges that are currently in place shall be prospectively charged, from the date the Commission's Order proving the Settlement Agreement becomes final, at \$2.16/1000 gallons for non-potable irrigation water usage in excess of 50,000 gallons/month, per applicable ERC unit. Any charges previously collected for excess water use at the prior existing incline block rate structure of \$2.16/1000 gallons for non-potable irrigation water usage in excess of 25,000 gallons/month, per applicable ERC unit shall be refunded in full, subject to Paragraph 5 below.
4. The base facility charges specified by the PSC in the December 9, 1997, Order, Order No. PSC-97-1546-FOF-WS, shall apply, retroactive to GRENELEFE UTILITIES' initial billing period, (i.e., September 1996). To the extent any refunds are due the customers for excess base facility charges, they will be refunded in accordance with Paragraph 5. below. GRENELEFE UTILITIES will not seek recovery of any retroactive charges due, if any, hereunder.
5. All refunds to customers, shall be in accordance with Rule 25-30.360, Fla. Admin. Code. except to the extent such charges were unpaid.
6. Any refund amount due the CONDO ASSOCIATION under this Settlement Agreement will be subject to offset by the amounts currently due and unpaid by the CONDO ASSOCIATION for previous non-potable irrigation water service to the CONDO ASSOCIATION.
7. GRENELEFE UTILITIES further agrees to purchase 47 Hardie Century Series, heavy-duty globe/angle valves with pressure regulation option, model 103 leak monitors for the CONDO ASSOCIATION'S non-potable irrigation water system, and to provide those leak monitors to The CONDO ASSOCIATION within ten (10) days of the date of the Commission's Order approving this Settlement Agreement. To the extent GRENELEFE UTILITIES fails to provide these leak monitors by this deadline, The CONDO ASSOCIATION may purchase such monitors and offset the cost thereof against Utility service charges due from The CONDO ASSOCIATION. The CONDO ASSOCIATION agrees to bear the costs of installing the leak monitors.
8. GRENELEFE UTILITIES agrees to not seek rate relief for non potable irrigation water uses for a period of one (1) year

from the date the PSC Order authorizing the settlement of this case becomes final.

9. GRENELEFE UTILITIES also agrees to not apply to the PSC for yearly cost of living rate adjustments for the one year period from the date the PSC Order authorizing the settlement of this case becomes final.

10. GRENELEFE UTILITIES agrees to withdraw its protest of PSC Order No. 97-1546-FOF-WS to the extent it is modified to incorporate the Terms and Conditions of this Settlement Agreement.

11. The Condo Association agrees to withdraw its petition to Intervene and to stipulate the dismissal of this action before the PSC based on the Terms and Conditions of this Settlement Agreement. The CONDO ASSOCIATION and GRENELEFE UTILITIES agree to cooperate and to do all that is reasonably necessary to secure the resolution of this action before the PSC based on the Settlement Agreement, without further litigation. The CONDO ASSOCIATION and GRENELEFE UTILITIES further agree to not protest any proposed agency action by the PSC that results from resolution of this matter on the Terms and Conditions of the Settlement Agreement, as set forth herein.

12. The parties agree and understand that the validity and enforcement of this Settlement Agreement is contingent solely upon the acceptance by the PSC of the Terms and Conditions stated herein, and the issuance of a Final Order settling this case on the Terms and Conditions stated herein. The dismissal or other resolution of Docket No. 961006-WS by Final Order, based on the Terms and Conditions set forth herein, is a condition precedent to the enforcement of this Settlement Agreement. Should the PSC refuse in any manner to accept the Terms and Conditions of this Settlement Agreement, this Settlement Agreement shall be null and void, unless the parties agree otherwise, in writing.

13. The parties acknowledge that each party and its counsel have reviewed and revised this Settlement Agreement and that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Settlement Agreement and Release.

14. This Settlement Agreement constitutes the entire agreement between the parties hereto with respect to the matters set forth herein, and supersedes in its entirety any and all agreements or communications, whether written or oral, previously or contemporaneously made in connection with the matter herein. Any agreement to amend or modify the Terms and Conditions of this Settlement Agreement must be in writing and executed by the parties hereto.

15. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to the principles of conflicts of law. Venue for any action to enforce this Settlement Agreement and Release to the extent not within the jurisdiction of the Florida Public Service Commission, shall lie exclusively in the courts of Polk County, Florida.

16. Neither this Settlement Agreement nor anything contained herein shall constitute or is to be construed as an admission by either party as evidence of any liability, wrongdoing, or unlawful conduct.

17. Subject to the Terms and Conditions of the Settlement Agreement, particularly the Terms and Conditions relating to the conditions precedent to the validity and enforceability of this Settlement Agreement set forth above, each party reserves any and all rights to enforce the terms of this Settlement Agreement. In the event that a legal action is brought to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to recover its costs of courts, including all attorneys' fees and all trial and appellate levels, which sum shall include costs associated with reasonable attorneys' travel, reasonable investigative costs and reasonable paralegal fees.

18. GRENELEFE UTILITIES shall not seek to recover any of its legal costs and expenses incurred in connection with PSC Docket No. 961006-WS in any future rate proceeding before the Florida Public Service Commission, or its successor.

IN WITNESS WHEREOF, each party to this Settlement Agreement has caused it to be executed on the 16 day of ~~June~~, 1998, knowingly and voluntarily, and with advice of counsel. *JLJ*

For SPORTS SHINKO UTILITY, INC., D/B/A GRENELEFE UTILITIES:

By: *[Signature]*

Its: *Vice President*
(Title).

For GRENELEFE ASSOCIATION OF CONDOMINIUM OWNERS No. 1, INC.:

By: *[Signature]*

Its: *President*
(Title).