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March 30, 1994

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. ~~92-18100-WH~~

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceedings on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Response to SGU's Objection to Certain Requests for Production -- Citizens' Motion to Strike.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean
Associate Public Counsel

- ACK
- AEA _____
- APP _____
- CIF Enclosures
- CMU _____
- CTR _____
- EAG _____
- LEG 12/17
- LIN 6
- OPC _____
- PRC _____
- SEC _____
- TRE _____

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RECORDS

DOCUMENT NUMBER-DATE

02986 MAR 30 1994

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Interim and)
Permanent Rate Increase in)
Franklin County, Florida by)
ST. GEORGE ISLAND UTILITY)
COMPANY, LTD.)

DOCKET NO. 940109-WU

Filed March 30, 1994

To: Prehearing Officer
Commissioner Julia L. Johnson

CITIZENS' RESPONSE TO SGU'S
OBJECTION TO CERTAIN REQUESTS FOR PRODUCTION

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MOTION TO STRIKE

The Citizens of the State of Florida respond to objections asserted in the Response to Citizen's First Request for Production of Documents to St. George Island Utility Company, Ltd. (SGU's pleading) as follows:

MOTION TO STRIKE

1. The Requests for Production to which SGU's pleading purports to respond were served on February 11, 1994.
2. The time for objecting or otherwise responding to the Citizens' request for production expired March 14, 1994¹.
3. The objections to requests for productions asserted in SGU's pleading are

¹ Rule 1.340(a) Fla. R. Civ. P. affords thirty days for response. In addition, the Order Establishing Procedure issued by the prehearing officer in this case, like all similar orders issued by this Commission, admonish the parties to assert discovery objections and the like within *ten* days of service of the discovery.

untimely; no justification whatsoever is offered for the untimely response; the material sought to be protected is the subject of the Citizens' timely Motion to Compel, filed March 17, 1994.

WHEREFORE, the Citizens move the prehearing officer to strike SGU's pleading because it is untimely.

CITIZENS' RESPONSE TO SGU'S PLEADING

Aside from SGU's Pleading's tardiness, and SGU's apparent waiver of the right to object to the requests for production, SGU's pleading is otherwise deficient on the merits:

4. SGU's objections fall into one of two categories, or into both. Objections are asserted either because: 1) SGU does not have something; or, 2) The material sought is "not relevant or material to the utility's rates or cost of service", or "not relevant to any issue before the Commission in this docket".
5. Neither of the two objections is a proper objection to discovery. If the utility does not have *and does not control* a document, it need not object, it need only make the assertion that it does not have the document.
6. The bare conclusory statement that the documents sought are "not relevant" is inadequate where the test for what is discoverable which includes information reasonably calculated to lead to the discovery of admissible evidence. Admissibility at hearing is thus not the test for what is

discoverable.

7. Moreover, the Citizens say that the documents sought are relevant and admissible at hearing (as well as reasonably calculated to lead to admissible evidence):

a. The tax returns of Armada Bay Company were requested for purposes of determining the business activities of Armada Bay Company. Armada Bay Company is located at the same address as the administrative office of SGU. Mr. Brown² is the president, secretary, and director of Armada Bay Company. Mr. Brow is also a management consultant for Armada Bay Company which proposes to charge the utility some \$48,000 for the management services of Mr. Brown. Armada Bay Company is an affiliate of the utility. The Citizens requested the tax returns to evaluate the transactions between the utility and Armada Bay Company and to evaluate Armada Bay Company's business activities as they relate to the utility. The tax returns of Armada Bay Company are also solicited for purposes of determining if Mr. Brown is receiving compensation from this company above and beyond that claimed in the utility's rate filing.

b. The Tax returns of ABC Management Company were requested for the same reasons as the tax returns for Armada Bay Company. However,

² Mr. Brown through his various affiliations for all intents and purposes is the owner and manager of St. George Island Utility Company, Ltd.

Citizens now believe that ABC Management Company is an acronym for Armada Bay Company, or the management operations thereof. Providing that the utility would swear to this under oath, the Citizens would withdraw its request.

- c. The documents relating to the 1979 IRS audit were requested for purposes of evaluating the original cost of the water system at the time it was sold to St. George Island Utility Company. In 1979, Leisure Properties (the general partner St. George Island Utility Company and developer of part of the island) sold to St. George Island Utility Company the water system for \$3,000,000. This amount was claimed on both the tax returns of the utility and Leisure Properties. The IRS audited Leisure Properties and the utility and disagreed with Leisure Properties' assessment of the value of the property sold to the utility. The IRS claimed the value to only be \$1.5 million. The Citizens believe that the IRS audit and associated documents are relevant to the value of the assets that should be included in rate base. The Commission, in the Company's last case noted that even though an original cost study was used to support the value of the assets. ..."if at any time in the future, evidence is produced which reflects that our analysis of SGU's investment is incorrect, we may, of course, readdress the issue of SGU's level of investment." [Order 21122, p. 7.] Thus, the documents requested are relevant and material to issues before this Commission.

- d. The utility tax returns for which the utility has sought confidential handling under Section 367.156, Florida Statutes (1993) for the period 1978 through 1986, those relating to the IRS audit, are requested for purposes of evaluating the original cost of utility assets when and after these assets were sold to St. George Island. Subsequent tax returns will show adjustments to the assets required by the IRS as well as additions to plant. The Citizens believe that the requested tax returns are relevant to the value of the assets that should be included in rate base.
- e. The tax returns of Leisure Properties, Ltd., like those relating to the IRS audit and the utility's tax return, are requested for purposes of evaluating the cost of the water systems assets at the time they were sold to St. George Island Utility Company, Ltd. Subsequent tax returns will show adjustments required by the IRS, any transactions that may have occurred between the utility and Leisure Properties, and the financial relationship between the utility and Leisure Properties. The Citizens believe that the requested tax returns are relevant to the value of the assets that should be included in rate base as well as the affiliate relationship between the utility and Leisure Properties.

With respect to the utility's claims that the documents are not in the care, custody or control of the utility company, the Citizens believe they are clearly within the care, custody, and control of Gene Brown. In response to OPC's interrogatory 12, the utility responded that Mr. Brown

was president of the two corporate general partners of Leisure Properties, Ltd. The utility also responded that Leisure Properties does not do any business except act as the general partner of St. George Island Utility Company, Ltd. Since Mr. Brown is the president of the two corporate general partners of Leisure Properties, which is the general partner of the utility, the Citizens believe that the documents are in the care, custody and control of Mr. Brown.

WHEREFORE, the Citizens reiterate the position stated in their March 17, 1994 motion to compel SGU to produce the documents requested and the Citizens say that the objections to discovery asserted in SGU's pleading should be stricken, but if not stricken, denied on the merits.

Respectfully submitted,



Harold McLean
Associate Public Counsel

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Tallahassee, FL 32399-1400
Attorney for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 940109-WU**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished
by U.S. Mail or hand-delivery to the following parties on this 30th day of March, 1994.

José Lorenzo
Division of Legal Services
Florida Public Service Commission
101 E. Gaines St.
Tallahassee, FL 32301

Gene D. Brown, Esq.
3848 Killearn Court
Tallahassee, FL 32308

A handwritten signature in black ink, appearing to read 'Harold McLean', is written over a horizontal line. The signature is stylized with a large initial 'H' and a long, sweeping tail that extends upwards and to the right.

Harold McLean
Associate Public Counsel