

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-WB~~

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ST. GEORGE ISLAND UTILITY CO., LTD.'S MOTION TO
COMPEL DISCOVERY OR ALTERNATIVE MOTION IN LIMINE

ST. GEORGE ISLAND UTILITY CO., LTD. ("SGIU"), by and through its undersigned counsel, in accordance with Section 120.58, Florida Statutes; Rule 25-22.034, Florida Administrative Code; and The Florida Rules of Civil Procedure, files this Motion to Compel Discovery.

SGIU is seeking an order compelling the Citizens of the State of Florida ("Citizens") to answer interrogatories to which it has interposed objections, or alternatively to produce records in accordance with Rule 1.340 (c), Florida Rules of Civil Procedure. If Citizens choose not to respond to the discovery requests, SGIU requests an order determining that Schedules 2 and 3 attached to the prefiled testimony of Citizens be determined inadmissible in evidence in this proceeding. In support of its Motion SGIU states:

1. SGIU filed and served interrogatories directed to Citizens on June 2, 1994. Citizens objected to Interrogatories Numbered 11 through 28. These interrogatories seek information relating to eighteen utilities that are the subject of two exhibits (Schedule 2 and Schedule 3), which are attached to the prefiled testimony of Kimberly H. Dismukes. In the schedules,

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Citizens relate certain information which they contend demonstrates that rates proposed by SGIU are not reasonable. The contention is based upon a conclusion that since these are all Class B utilities, the comparisons are justified. See: Dismukes Prefiled Testimony at pages 5-8. SGIU has sought to discover evidence that it believes will clearly reveal that the comparisons are utterly unjustifiable. In most instances the information elicited would be set forth on the same documents that Citizens used to develop its Schedules 2 and 3.

2. Citizens has objected contending that it would need to examine documents in order to make the comparisons, and that the documents are not in its possession.

3. If Citizens are not able to produce documents supporting their summaries then the summaries are not admissible in evidence. The summaries are clearly hearsay evidence. They represent Ms. Dismukes's testimony regarding the content of records that she has not included as a part of her prefiled testimony. Hearsay evidence is only admissible to supplement or explain other evidence. Section 120.59(1)(a), Florida Statutes.

4. Although the summaries are hearsay, it is appropriate to receive them in evidence under some circumstances. It is appropriate to use summaries of other documents as a means for proving the contents of records when it would not be convenient for the Commission to examine the contents of voluminous records. Section 90.956, Florida Statutes provides:

When it is not convenient to examine in court the contents of voluminous writings, recordings, or

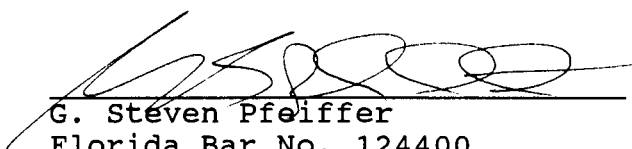
photographs, a party may present them in the form of a chart, summary or calculation by calling a qualified witness. The party intending to use such a summary must give timely written notice of his [sic] intention to use the summary, proof of which shall be filed with the court, and shall make the summary and the originals or duplicates of the data from which the summary is compiled available for examination or copying, or both, by other parties at a reasonable time and place. A judge may order that they be produced in court.

SGIU concedes that the summaries meet the provision of the statute so that they fall outside of the need to offer the underlying documents in evidence. The statute requires, however, that the underlying documents be made available for inspection by other parties. SGIU wants the opportunity to examine these documents in order to demonstrate that the comparisons that Ms. Dismukes has made are not valid comparisons.

5. While it may be appropriate for Citizens to object to discovery requests that place an information gathering burden upon them, that is not what is occurring here. SGIU is merely asking Citizens to allow provide information that is clearly calculated to lead to the discovery of admissible evidence, and that will assist the Commission in determining whether the comparisons that Ms. Dismukes has made are valid comparisons. If, as Citizens contend, it is a burden to do that than they should utilize the option provided in Rule 1.340(c), Florida Rules of Civil Procedure to produce records. It is no answer under the circumstances here to assert that the records are in the hands of some other entity. If Citizens cannot produce them than its summaries are inadmissible.

WHEREUPON, SGIU respectfully requests that the Prehearing Officer enter an order directing Citizens to answer Interrogatories Numbered 11-28, or to produce the records from which the information can be derived, or alternatively enter an order determining that Schedule 2 and Schedule 3 are not admissible in this proceeding.

Respectfully submitted this 5th day of July, 1994.



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**Attorneys for St. George
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Robert Pierson and Suzanne Summerlin, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863; and to Harold McLean, Associate Public Counsel, Claude Pepper Building, Room 812, 111 West Madison Street, Tallahassee, Florida 32399-1400; and a copy has been furnished by U.S. Mail to Barbara Sanders, St. George Island Water and Sewer District, Post Office Box 157, Apalachicola, Florida 32320 this 5th day of July, 1994.



Attorney