

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. 9402

ORIGINAL  
FILE COPY

RESPONSE OF ST. GEORGE ISLAND UTILITY CO., LTD.  
TO MOTION TO COMPEL FILED  
BY THE CITIZENS OF THE STATE OF FLORIDA

ST. GEORGE ISLAND UTILITY CO., LTD. ("SGIU"), by and through its undersigned counsel, files this Response to the Motion to Compel filed by the Citizens of the State of Florida ("Citizens"). In opposition to the Motion, SGIU states:

1. SGIU agrees with the sequence of filings and orders represented and set out in Citizen's Motion to Compel.

2. In its Order No. PSC-94-0571-CFO-W, the Commission directed SGIU to produce documents as set out in the Order. Undersigned counsel examined the Order and made immediate arrangements with SGIU to answer interrogatories and to produce documents as set out in the Order. In addressing documents that it directed be produced, the Order provides:

To the extent set forth below, OPC's motion to compel is granted in part and denied in part. OPC's Second Motion to Compel is granted as set forth below.

In each instance as it related to documents to be produced, the Order directed that documents be produced within five (5) days of the Order. At the conclusion of the Order the Prehearing Officer stated:

DOCUMENT NUMBER-DATE

06592 JUL-5

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ORDERED that St. George Island Utility Company, Ltd. is directed to respond to pertinent portions of the Office of Public Counsel's discovery as set forth in the body of this order.

The Order did not express any time period for producing documents except in paragraphs that followed provisions of the Order relating to specific interrogatories and documents.

3. Undersigned counsel interpreted the Order to direct only the specific discovery set forth in the Order, and advised SGIU to prepare discovery responses in accordance with it. The Order was entered on May 13, 1994. On May 20, 1994, within less than five days of service of the Order (not counting weekend days), undersigned counsel by telephone advised Counsel for Citizens that the documents were available for production at the Law Offices of Gene Brown. In its Notice stating compliance with the Order, which was filed and served by hand delivery on May 26, it was stated that the documents were available at the offices of the undersigned attorney. It was thought that the offices of undersigned counsel would be more convenient for Public Counsel than the offices of Gene Brown.

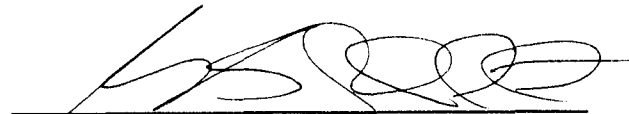
4. On June 21, Public Counsel first requested an opportunity to examine the documents in accordance with SGIU's Notice. Undersigned counsel arranged an appointment with Ms. Dismukes, to suit her schedule, for 10:00 a.m. on June 22. She arrived, somewhat late, and examined the documents. We arranged to copy for her those documents that were not subject to a protective order.

5. Later that same day Ms. Dismukes and Mr. McLean advised undersigned counsel that in their view the Order compelled the production of other documents that were not specifically addressed in the Order. While SGIU does not agree with their interpretation, the Order stating what it states, SGIU is willing to produce documents as requested by Public Counsel, and is making arrangements to do that. The request is, however, voluminous, and comes at a time when SGIU needs to direct its resources to preparing Prehearing Statements and Prefiled Rebuttal testimony supporting its position in this proceeding.

6. Except in one particular, SGIU is willing to produce documents for Public Counsel as it requests, and will do so as soon as they can be gathered. Public Counsel interprets the Commission's order regarding its Request No. 25 as requiring SGIU to produce a document provided by SGIU's consultant Mr. Seidman to Gene Brown as attorney for SGIU. The document relates to litigation strategy in this proceeding. It is clearly a work product document and should not be produced. SGIU would ask the Commission to reconsider its Order in so far as it directs production of privileged, work product communications. While SGIU was, under Commission directive, late in interposing an objection to the request, this lateness in no way prejudiced the resolution of the issue. Important principles such as work product and attorney client privileges should not be lightly put aside. There is no question that the documents are privileged. Indeed Public Counsel has not stated to the contrary.

WHEREUPON, SGIU respectfully requests that Citizen's Motion to Compel be denied.

Respectfully submitted this 5<sup>th</sup> day of July, 1994.



G. Steven Pfeiffer  
Florida Bar No. 124400  
APGAR, PELHAM, PFEIFFER  
& THERIAQUE  
909 East Park Avenue  
Tallahassee, Florida 32301  
Telephone: 904/222-5984

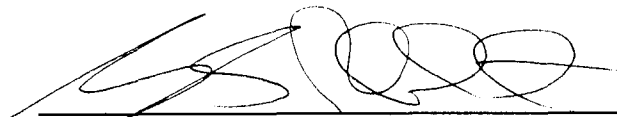
-and-

Gene D. Brown  
Florida Bar No. 096262  
3848 Killearn Court  
Tallahassee, Florida 32308  
Telephone: 904/668-6103

**Attorneys for St. George  
Island Utility Company, Ltd.**

**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 5<sup>th</sup> day of July, 1994.



Attorney

87 am

**APGAR, PELHAM, PFEIFFER & THERIAQUE**  
Attorneys at Law

Robert C. Apgar  
Thomas G. Pelham  
G. Steven Pfeiffer  
David A. Theriaque

909 East Park Avenue  
Tallahassee, Florida 32301  
Telephone: 904/222-5984  
Facsimile: 904/222-7144

July 5, 1994

**ORIGINAL  
FILE COPY**

HAND DELIVERED

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
101 East Gaines Street  
Tallahassee, Florida 32399-1400

Re: Petition for Interim and Permanent Rate Increase in Franklin County, Florida  
by St. George Island Utility Company, Ltd., FPSC Docket No. ~~940109-WU~~

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and 15 copies of the following documents:

- ACK  (1) Response Of St. George Island Utility Co., Ltd. To Motion To Compel Filed
- AFR  By The Citizens Of The State Of Florida;
- AL  (2) Response Of St. George Island Utility Co., Ltd. To Motion To File
- CL  Supplemental Testimony Filed By The Citizens Of The State of Florida; and
- CR  (3) St. George Island Utility Co., Ltd.'s Motion To Compel Discovery Or
- CS  Alternative Motion In Limine.

EBB *Pierson* Please acknowledge receipt and filing of the above by stamping the duplicate copy of  
EFC  this letter and returning it to the undersigned.

RECEIVED & FILED

*Max*  
FPSC-BUREAU OF RECORDS

*Response to Motion to Compel*  
DOCUMENT NUMBER-DATE

06592 JUL -5 1994

FPSC-RECORDS/REPORTING

*Response to Motion to File Supplemental Testimony*  
DOCUMENT NUMBER-DATE

06593 JUL -5 1994

FPSC-RECORDS/REPORTING

*Motion Compel Discovery or Alt. Motion*  
DOCUMENT NUMBER-DATE

06594 JUL -5 1994

FPSC-RECORDS/REPORTING

*WAS Willis*  
RHM

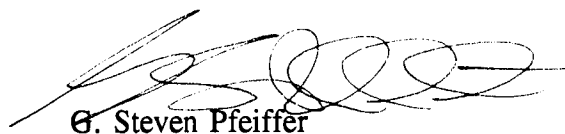
Ms. Blanca S. Bayo  
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Thank you for your assistance.

Sincerely,

APGAR, PELHAM, PFEIFFER  
& THERIAQUE



G. Steven Pfeiffer

GSP/rd  
Enclosures