

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. [REDACTED]

**ORIGINAL
FILE COPY**

**ST. GEORGE ISLAND UTILITY CO., LTD.'S
MOTION TO ALLOW LATE PREFILED REBUTTAL
TESTIMONY AND SUPPORTING MEMORANDUM**

ST. GEORGE ISLAND UTILITY CO. LTD. ("SGIU"), by and through its undersigned counsel, in accordance with Rule 25-22.037, Florida Administrative Code, files this Motion to Allow Late Filed Rebuttal Testimony. In support of its Motion SGIU states:

1. In accordance with an amended notice, the Prehearing Officer allowed SGIU until July 7, 1994, within which to file its prefiled rebuttal testimony.
2. SGIU worked diligently to prepare its prefiled testimony, but ran into difficulty getting the documents printed in sufficient quantity to meet Commission rules. Accordingly, at approximately 3:30 p.m. on July 6, SGIU, through its undersigned counsel, advised counsel for the Commission Staff, Public Counsel and Counsel for the intervenor, that the prefiled testimony of five of its witnesses would be filed that afternoon, but that the testimony of other witnesses would not be completed until after 5:00 p.m. and would be filed at 8:00 a.m. on July 7.

DOCUMENT NUMBER-DATE
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FPC-RECORDS/REF ID: 388

3. The testimony of the witnesses Brown, Chase and Baltzley and was completed and presented for filing at approximately 10:30 a.m. on July 7. SGIU was advised that the testimony would not be accepted for filing.

4. SGIU acknowledges that the testimony was filed late. SGIU worked diligently to prepare the testimony and file it on time. Problems arose, and the testimony was filed late by several hours.

5. No other party in this proceeding has been prejudiced in any manner by the late filing. All of the parties, except intervenor, obtained the prefiled testimony before noon on July 7 because it was served by hand delivery. Intervenor's copies of the prefiled testimony was hand delivered in Apalachicola on the afternoon of July 7. If the materials had been filed by mail, counsel for the parties would not have received it for several days. SGIU did not, however, avail itself of the right to serve the documents by mail. Instead, SGIU diligently sought to get the documents to counsel for the parties as expeditiously as possible. The lack of prejudice to the parties is evident. Indeed, Counsel for the Citizens of Florida had earlier stipulated to allow SGIU until July 11, to file its prefiled rebuttal testimony.

6. SGIU would be severely prejudiced if it is not permitted to file its rebuttal testimony. Indeed, SGIU would likely be in a position of not being able to proceed viably in the case on account of filing the documents late by what amounts to two and one half hours.

WHEREUPON, SGIU respectfully requests that it be permitted to file the testimony of Gene Brown, Sandra Chase and Steve Baltzley late.

SUPPORTING MEMORANDUM

SGIU acknowledges that the testimony was filed late by two and one half hours. The time limit for filing prefiled testimony is not a jurisdictional time limit. While failure to meet a filing deadline is neither laudable nor to be lightly overlooked, taking the draconian action of not allowing the testimony to be filed would constitute reversible error.

The purpose of rules and orders setting time constraints are to facilitate the orderly conduct of business. Under many circumstances the Courts have held that failure to meet a time constraint should not result in an agency ignoring information that is provided in a manner that its consideration would not prejudice other parties. See e.g. Hamilton County Board of County Commissioners v. Department of Environmental Regulation, 587 So. 2d 1387 (Fla. 1st DCA 1991); School Board of Leon County v. Weaver, 556 So. 2d 443 (Fla. 1st DCA 1990). Indeed, reversible error has been found even with regard to the filing of a petition for hearing after the "point of entry" period designated in an agency's notice had expired. Broward County Board of County Commissioners v. Department of Environmental Regulation, 495 So. 2d 863 (Fla. 4th DCA 1986).

In this instance the filing of the "prefiled rebuttal testimony" was late by only two and one half hours. None of the other parties will be prejudiced by any delay in the filing. SGIU would be severely prejudiced if its prefiled testimony is rejected.

WHEREUPON, SGIU respectfully requests that the Commission allow the late filing of the rebuttal testimony of the witnesses Brown, Chase and Baltzley.

Respectfully submitted this 11th day of July, 1994.



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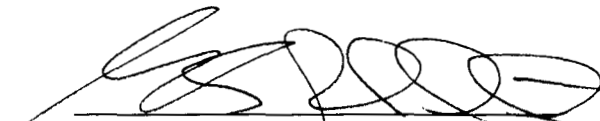
-and-

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**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 11th day of July, 1994.


Attorney

Ms. Blanca S. Bayo, Director
July 11, 1994
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Thank you for your assistance.

Sincerely,

APGAR, PELHAM, PFEIFFER
& THERIAQUE

A handwritten signature in black ink, appearing to read 'G. Pfeiffer', written over a horizontal line.

G. Steven Pfeiffer

GSP/deb
Enclosures