FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

JANUARY 26, 1995

TO : **DIRECTOR, DIVISION OF RECORDS AND REPORTING**

FROM : **DIVISION OF WATER AND WASTEWATER (MONIZ, WILLIAMS, WEBB, AMAYA, STARLING)**
DIVISION OF LEGAL SERVICES (PIERSON)

RE : **UTILITY: ST. GEORGE ISLAND UTILITY CO., LTD.**
DOCKET NO.: 940109-WU
COUNTY: FRANKLIN
CASE: APPLICATION FOR A RATE INCREASE

AGENDA : **FEBRUARY 7, 1995 - REGULAR AGENDA - MOTION FOR RECONSIDERATION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF**

CRITICAL DATES: **8-MONTH EXPIRATION DATE EXTENDED TO OCTOBER 16, 1994**

SPECIAL INSTRUCTIONS: NONE

Location of File - [I:\PSC\WAW\WP\940109B.RCM]

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CASE BACKGROUND

St. George Island Utility, Ltd. (St. George, SGIU or utility) is a Class B water utility providing service for approximately 993 water customers in Franklin County. For the test year ended December 31, 1992, the utility reported, in its application, operating revenues of $314,517 and a net operating loss of $428,201.

On January 31, 1994, the utility filed an application for approval of interim and permanent rate increases pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility satisfied the Minimum Filing Requirements (MFRs) for a rate increase, and this date was designated as the official filing date. The utility's present rate of return was established in Order No. 21122, issued on April 24, 1989, in Docket No. 871177-WU.

St. George requested interim water rates designed to generate annual revenues of $435,453. The requested revenues would exceed test year revenues by $120,935 for a requested interim increase of 38.45%. The utility requested final water rates designed to generate annual revenues of $742,718, which exceed test year revenues by $428,201 for a 136.15% increase. The utility stated in its filing that the final rates requested would be sufficient to recover a 8.07% rate of return on its rate base. The utility's application for increased rates is based on the test year ended December 31, 1992 for both interim and final.

On March 14, 1994, Order No. PSC-94-0291-PCO-WU was issued acknowledging the intervention of the Office of Public Counsel (OPC). On March 18, 1994, Order No. PSC-94-0461-FOF-WU was issued suspending the permanent rate increase request and granting interim rates subject to refund. This Order also provided that the utility provide a bond in the amount of $34,307 as guarantee for any potential refund of interim water revenues. On March 21, 1994, Order No. PSC-94-0320-PCO-WU was issued establishing procedure for this case. On May 13, 1994, Order No. PSC-94-0571-CFO-WU was issued granting the request by the Utility for confidential treatment of its 1987, 1988, 1989, 1990, 1991, and 1992 tax returns and associated work papers while in the possession of the Office of Public Counsel; and resolving discovery motions filed by the Office of Public Counsel. On May 16, 1994, Order No. PSC-94-0573-PCO-WU was issued granting the petition to intervene filed by the St. George Island Water Sewer District (District). And on July 14, 1994, Prehearing Order No. PSC-94-0856-PHO-WU was issued.

On July 12, 1994, the Prehearing Conference was held and there were forty-two (42) issues identified. The technical hearing was held in Apalachicola on July 20, and 21, 1994, and was continued in

Tallahassee on August 3, 9, and was concluded on August 10, 1994. The Commission issued Order No. PSC-94-1383-FOF-WU on November 14, 1994 approving revised final rates and charges for St. George. St. George timely filed a Motion for Reconsideration on November 29, 1994. On December 12, 1994, the Office of Public Counsel filed its response to St. George's Motion for Reconsideration and also filed a Cross Motion for Reconsideration. Also on this date, OPC also filed a Motion to Strike certain material from St. George's Motion for Reconsideration.

On December 27, 1994, St. George filed it's Response to OPC's Motion to Strike. Also on this date, St. George filed its Reply to OPC's Response to Motion for Reconsideration and its Response to OPC's Cross Motion for Reconsideration. On January 12, 1995, OPC filed a Motion to Strike St. George's Response to OPC's previous Cross Motion for Reconsideration. On January 19, 1995, St. George filed a Response to Motion to Strike.

ISSUE 1: Should the Commission grant OPC's motion to strike Attachment 3 to St. George's motion for reconsideration?

RECOMMENDATION: Yes. The attachment is not part of the record and cannot be considered by the Commission in any regard. (PIERSON)

STAFF ANALYSIS: Attachment 3 to St. George's motion for reconsideration consists of a letter from Les Thomas, one of St. George's engineering consultants. It is not a part of the record for this proceeding and, as such, OPC argues that the Commission cannot rely upon it and that it should, therefore, be stricken. St. George argues that the letter is not offered as evidence upon which the Commission should rely, but rather, "to illustrate the unreliability of the hearsay evidence and to demonstrate the sort of testimony that could have been elicited on cross examination if direct rather than hearsay evidence had been presented."

Staff agrees with OPC. The letter is not in evidence, and cannot be considered by the Commission in making its decision. The Commission's decision must be based solely upon the record. Staff, therefore, recommends that OPC's motion to strike Attachment 3 be granted.

ISSUE 2: Should the Commission grant OPC's motion to strike St. George's reply to OPC's response to St. George's motion for reconsideration?

RECOMMENDATION: No. Although the Commission's rules do not expressly authorize the reply, the Commission has considered such filings in the past. Further, in this case, the reply will not work to prejudice any other party. (PIERSON)

STAFF ANALYSIS: As mentioned in the case background, St. George filed a reply to OPC's response to its motion for reconsideration. Although the Commission's rules do not expressly authorize the reply, this Commission has considered such replies in the past. Although Staff does not believe that the Commission should encourage the filing of such replies, Staff also does not believe that, in this case, the reply will prejudice any other party. Accordingly, Staff recommends that the Commission deny OPC's motion to strike St. George's reply.

ISSUE 3: Should the Commission reject St. George's allegations that Staff is a party and that the utility is adversely affected by the Commission's final decision?

RECOMMENDATION: Yes. (PIERSON)

STAFF ANALYSIS: In its motion for reconsideration, St. George alleges that Staff is a party to this proceeding. In its response to St. George's motion for reconsideration, OPC rejects that allegation. In its reply to OPC's response, St. George cites the definition of "party" as "[a]ny other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party." Section 120.52(12)(c), Florida Statutes. Although Staff is authorized to act as a party, it is not a party. South Florida Natural Gas v. FPSC, 534 So.2d 695 (Fla. 1988). Staff has no interest in the outcome of the case, other than to see that "all relevant facts and issues are clearly brought before the Commission for its consideration." Rule 25-22.026(3), Florida Administrative Code. Staff, therefore, recommends that the Commission reject St. George's allegation that Staff is a party.

OPC also rejects St. George's assertion that it is adversely affected by the final order in this proceeding. St. George argues that OPC's rejection of its assertion is "ridiculous." Staff agrees with OPC. In a utility rate proceeding, the burden lies with the utility to prove the level and prudence of its investment and expenses. South Florida Natural Gas v. FPSC, 534 So.2d 695 (Fla. 1988). St. George has received a rate increase. The rate increase includes components for all investment and expenses for which St. George has met the burden of proof. Staff, therefore, agrees with OPC that St. George cannot claim that it is adversely affected by the Commission's final decision.

ISSUE 4: Should the Commission grant the Utility's Motion for Reconsideration regarding a duplication of a pro forma CIAC adjustment?

RECOMMENDATION: No. (K. WILLIAMS)

STAFF ANALYSIS: The Utility's MFRs were based on the average historical test year ending December 31, 1992, with pro forma adjustments to its expenses. In Order No. PSC-94-1383-FOF-WU, the Commission adjusted the Utility's rate base to reflect the 1993 average balance. This was done to be consistent with the use of the 1993 actual revenues and the 1993 pro forma expenses allowed. The adjustment was made by taking the difference between the December 31, 1992 adjusted Utility balances in the MFRs and the balances from the Utility's December 31, 1993 general ledger. As a result, the Utility's overall rate base was decreased by $190,062. One component of this adjustment was to increase CIAC by $267,148.

In its Motion for Reconsideration, the Utility stated that the 1993 level of CIAC used by the Commission was overstated by $22,220. The Utility argues that the $22,220 was included in the test year and in the average 1993 additions to CIAC. Therefore, the Utility believes that CIAC is overstated by $22,220. In addition, the Utility states that the associated accumulated amortization must also be adjusted. The adjustment to amortization for one half year is $258. Therefore, the Utility explains that the net correction of this error would be an increase to rate base of $21,962.

In its response to the Utility's Motion for Reconsideration, OPC argues that the Utility's Motion did not cite any transcript page or exhibit to support its contention of a duplicate pro forma adjustment. OPC further argues the utility did not justify that the CIAC was booked in 1993. OPC states that the Utility could have easily produced evidence at the hearing or in its rebuttal testimony supporting its contention that the CIAC was booked in 1993. Accordingly, OPC stated that SGIU has pointed out no error of fact or law.

In reply to OPC's response to the Utility's Motion for Reconsideration, the Utility still believes that the record supports a duplication of a pro forma CIAC adjustment. SGIU disagreed with OPC's facts that the evidence was not presented at the hearing. SGIU stated that its evidence was in Witness Siedman's testimony. Lastly, SGIU believes that the duplicate pro forma adjustment resulted from using information outside of the Utility's requested test year. The Utility explains that it was not able to correct the error because the final adjustments were not known

until the recommendation was made to the Commission.

Staff believes that the evidence relied upon by the Commission was based primarily on the testimony of Witness Dismukes. The Utility had ample opportunity to dispute any amounts as testified by Ms. Dismukes, but failed to do so. The only testimony by Utility Witness Seidman was to dispute the issue in total, not by amounts.

The purpose of reconsideration is to bring to the Commission's attention some point which it overlooked or failed to consider when it rendered its final order. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). In staff's opinion, the Utility has not shown a stated error in fact or law relating to the Commission's adjustment. Therefore, Staff recommends that the Utility's Motion for Reconsideration on the duplication of the pro forma CIAC adjustment be denied.

ISSUE 5: Should the Commission grant the Utility's Motion for Reconsideration matching the property contribution to CIAC with the corresponding investment in plant in service?

RECOMMENDATION: No. (K. WILLIAMS)

STAFF ANALYSIS: As explained in Issue 1, the December 31, 1992 average rate base balances were adjusted to reflect the average 1993 balances by using the MFRs and the 1993 general ledger balances. These adjustments increased plant in service and CIAC by $104,553 and $267,148, respectively.

In the Motion for Reconsideration, the Utility states that the increase in CIAC to the 1993 level included $137,739 in contributed property. According to the Motion for Reconsideration, this contributed property was composed of $92,952 for Casa del Mar and $44,787 for Billy Schultz. These amounts are not in the record. The Utility explains that its average rate base should have been increased by half of $137,739 or $68,870. Accumulated amortization of CIAC of $802 for one half year should be netted against this amount for a total increase to rate base of $68,068.

In its response to the Utility's Motion, OPC states that the Utility failed to produce the evidence substantiating their claim which is made clear by the omission of any cite of the record in the Utility's Motion. OPC states that the Commission has made no error of fact or law and that the Commission should deny the Company's Motion on this issue.

In reply to OPC's response to the Utility's Motion for Reconsideration, the Utility agrees that it does not state any evidence to support an increased rate base for the additional contributed property in 1993. The Utility does state that it is being asked to rebut evidence that was never presented. The Utility states that Staff must have examined the 1993 accounts to determine a figure for revising Plant in Service from the 1992 test year to 1993. The utility contends that it would be better to return to the 1992 approved test year rather than condoning a procedure that allows for unreviewable calculations.

As discussed in Issue 1, the Commission relied on the testimony of OPC Witness Dismukes. The basic premise of her testimony took the balances from the MFRs and the 1993 general ledger and calculated an average balance. Mr. Seidman's testimony reflect the total amounts collected in 1993 and not the accuracy of the Utility's 1993 CIAC general ledger balance. If the utility is concerned that property CIAC was picked up from the general ledger, but the corresponding plant was not, an obvious problem may exist in the Utility's accounting records. If such plant was not

included in the 1993 general ledger, it was the Utility's burden to dispute the testimony in the record. It did not do so.

As such, Staff believes that there has been no stated error in fact or law. Staff recommends that the Utility's Motion for Reconsideration regarding any matching of plant to a property contribution be denied.

ISSUE 6: Should the Commission reconsider its decision regarding the cost of lines located within the State Park in the original cost calculation and, if so, is a $27,873 reduction to CIAC required?

RECOMMENDATION: No. No adjustment is necessary. (STARLING)

STAFF ANALYSIS: SGIU claims that the Commission did not include the lines located within the state park in its original cost calculation. To support this assertion, SGIU references the following statement from page 25 of Order PSC-94-1383-FOF-WU: "The costs for the T&D system and its appurtenances within the state park are not included in this calculation." SGIU claims that $27,873 of CIAC is associated with the lines in the state park. SGIU believes that if the Commission disallows the original cost of the lines within the state park in rate base, then this CIAC should also be removed.

OPC responds that there is no evidence in the record to support either the amount of CIAC allegedly included in rate base, or the suggestion that it was included in rate base.

SGIU has taken the statement from the Order out of context. The complete paragraph is provided:

> "Another method is to take the ratio of the cost of fittings to the cost of lines from the 1982 Bishop study, and multiply the cost for T&D mains by this ratio. We find that this method is a fair and reasonable approach, since over half of the T&D system was constructed by 1982. We have calculated that the ratio of the replacement cost of fittings to the replacement cost of the T&D system in the 1982 Bishop study is 11.11 percent. Multiplying the original cost of the lines by 11.11 percent, we find that the original cost for all of the appurtenances is $92,780. The costs for the T&D system and its appurtenances within the state park are not included in this calculation." (page 25 of Order PSC-94-1383-FOF-WU)

This paragraph means that for the sole purpose of calculating the ratio of appurtenances to lines in the Commission's original cost calculation, the ratio of lines to appurtenances within the state park from the 1982 Bishop study were not considered. It does not mean that the lines within the state park were somehow excluded from the Commission's original cost calculation. The only way that these lines could be excluded is if Mr. Coloney failed to include them in his 1988 original cost study.

Staff believes that Mr. Coloney's original cost study includes the state park lines in his inventory of the utility's transmission and distribution system (the same is also true for the interconnection with Eastpoint which Mr. Thomas references in his letter). Mr. Coloney's 1988 original cost study states that:

> "In order to establish the extent of capital investment in the system, the following procedure has been used:
>
> a. Analysis of available plans and records combined with field surveys and measurements resulted in a listing of all physical facilities currently operating and in use by SGIU. It is believed that this tabulation of quantities is reasonably accurate; however, it can be certified that any error which may exist has resulted in the omission of facilities and, as a result, the estimated total value will be less than the actual value if an error has occurred." (EXH 8, p. 3-4)

In its original cost calculation, the Commission did not reduce the length of lines from Mr. Coloney's study (only the unit cost for the lines was changed). Since the state park was receiving service when Mr. Coloney conducted his study (EXH 8, p. 12), staff believes that the original cost of the state park lines are included in the Commission's original cost calculation. Therefore, no reduction for any CIAC associated with the lines in the state park is necessary.

ISSUE 7: Should the Commission reconsider its disallowance of duplicative engineering design fees?

RECOMMENDATION: No. St. George has not identified any error or omission of fact or law in this regard. (PIERSON, AMAYA)

STAFF ANALYSIS: St. George claims that the Commission erred by disallowing engineering design fees in the amount of $21,000. St. George claims that there is no evidence in the record to demonstrate that these fees were previously capitalized or expensed.

OPC argues that there is adequate support in the record for the Commission's decision, in the form of testimony from the Staff auditor.

Staff agrees with OPC. St. George appears to misapprehend that it is the one that has the burden of proof in a rate proceeding. St. George provided cites to the record which, it argues, demonstrates that the evidence does not support the Commission's decision. One cite is where Mr. Seidman testifies, quite generally, that the utility prepared responses to the Staff audit report. This does not constitute competent substantial evidence that the fees were not previously capitalized or expensed. The other cite consists of a bill rendered by Mr. Coloney, several years after the fact. At best, Mr. Coloney's bill might support that the costs were incurred, but it does not prove that these costs were not previously capitalized or expensed.

In its reply to OPC's response to its motion for reconsideration, St. George provides another cite, wherein Mr. Seidman testified that he believed that the fees had not been capitalized or expensed based upon "discussions with Ms. Drawdy, and my understanding is that they were booked, I think, through accounts payable and never entered onto either plant or expense." Mr. Seidman's conclusory statement does not prove that the fees were not capitalized or expensed. When faced with conflicting testimony or other evidence, it is the Commission's function to determine which is the more credible. Rolling Oaks Utilities, Inc. v. FPSC, 533 So.2d 770 (Fla. 1988). Here, the Commission determined that the evidence put on by St. George did not satisfy its burden of proof.

St. George has not identified any error or omission of fact or law. Accordingly, Staff recommends that the Commission deny St. George's motion for reconsideration of the engineering design fees issue.

ISSUE 8: Should the Commission reconsider its disallowance of travel expense for Tallahassee-based utility employees?

RECOMMENDATION: No. St. George has not identified any error or omission of fact or law in this regard. (PIERSON)

STAFF ANALYSIS: St. George argues that the Commission erred in not approving a travel allowance for its Tallahassee-based employees. In support of its claim, St. George cited certain testimony by Witnesses Brown, Seidman, and Chase. St. George claims that its mileage estimates are conservative, based upon experience, and less than would be required if it owned and maintained its own vehicles.

OPC argues that the Commission did not err, and that St. George merely failed to carry its burden of proof on this issue. In support of its claim, OPC cited countervailing testimony of its witness, Kimberly Dismukes.

Staff agrees with OPC. This is a burden of proof issue. The burden lies with St. George to prove its expenses, not with OPC or the Commission to disprove them. The only evidence that St. George has to rely upon is uncorroborated testimony. When faced with conflicting testimony or other evidence, the Commission, as the finder of fact, must determine which is more credible. Rolling Oaks Utilities, Inc. v. FPSC, 533 So.2d 770 (Fla. 1988). Staff is not suggesting that St. George's Tallahassee-based employees do not perform work-related travel, just that the utility failed to prove up its estimates.

St. George was on notice that its mileage estimates were to be scrutinized. At a deposition of one of its employees, Hank Garrett, Mr. Garrett was asked to keep detailed records of his mileage for use at the hearing. St. George could have kept similar records for its other employees, which information would have been more compelling than mere conclusory testimony.

For the reasons cited above, Staff recommends that the utility has not demonstrated that the Commission erred by disallowing travel expense for the utility's Tallahassee-based employees and that the Commission should, therefore, reject the utility's motion for reconsideration on this issue.

ISSUE 9: Should the Commission reconsider its decision regarding fees for legal contractual service?

RECOMMENDATION: No. St. George has not identified any error or omission of fact or law in this regard. (PIERSON)

STAFF ANALYSIS: St. George also argues that the Commission erred in its decision regarding contractual fees for legal services. St. George argues that the allowed legal fees, (which, it argues, were based upon the legal fees of a "comparable utility"), were based upon "the testimony of a witness [Ms. Dismukes] who admitted that she was not qualified to determine when it is necessary to secure legal service." St. George further argues that the "comparable utility" is unlike St. George and, if the Commission is going to allow legal fees based upon a comparable utility, it should choose one that is more comparable.

OPC objects to George's characterization of Ms. Dismukes' "qualifications" to determine when legal services were appropriate. OPC agrees that Ms. Dismukes testified that Mr. Brown should determine when legal services are necessary; however, OPC points out that it is up to the Commission to determine whether such costs should be borne by the ratepayers. OPC also takes issue with the utility's argument regarding the so called "comparable utility". OPC also suggests that the utility to which St. George compares itself is similar mainly in its litigiousness. Finally, OPC argues that the Commission did not base legal fees upon only one utility, but on an average of legal fees for all Class B utilities.

The Commission found that St. George had not adequately supported its legal fees. In part, the Commission's finding was based upon the fact that legal services are provided to the utility based upon a retainer agreement between Mr. Brown and St. George. The Commission's decision was also based, in part, upon the fact that the utility's only objective support for the fees were timeslips kept for a four- to six-week period in 1993. In addition, the finding was based upon the fact that many of the legal services performed are not appropriately borne by the ratepayers. OPC is also correct that the fees allowed were not based upon any one utility, but an average of legal expense for all Class B utilities. The burden to prove that any of the fees were prudently incurred belongs with St. George. South Florida Natural Gas, supra. It is not up to OPC or the Commission to prove the contrary. St. George simply did not adequately support its requested legal fees.

St. George has not identified any error or omission of fact or law. Accordingly, Staff recommends that the Commission reject its motion for reconsideration of this issue.

ISSUE 10: Should the Commission grant St. George's motion for reconsideration of the original cost of the utility?

RECOMMENDATION: No. St. George has not identified any error or omission of fact or law in this regard. (PIERSON)

STAFF ANALYSIS: In its final decision in this case, the Commission utilized three different engineering studies: a 1978 Bishop study; a 1982 Bishop study; and a 1988 Coloney study. St. George argues that the Commission erred by considering the two Bishop studies. According to St. George, the Bishop studies are "rank hearsay."

OPC notes that St. George's only objection to the 1978 Bishop study at the hearing was one of authentication, not hearsay. As for the 1982 Bishop study, OPC points out that it was both identified and moved into the record without objection by St. George itself. OPC, therefore, argues that St. George has waived its hearsay objections to both of the Bishop studies.

OPC is correct in that no hearsay objections were interposed to either of the Bishop studies. Under Section 90.104, Florida Statutes:

> (1) A court may predicate error, set aside or reverse a judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected and:
>
> (a) When the ruling is one admitting evidence, ***a timely objection or motion to strike appears on the record, stating the specific ground of objection if the specific ground was not apparent from the context;*** (Emphasis added.)

* * *

In McMillan v. Reese, 61 Fla. 360, 55 So. 388 (1911), the Court held that an "[o]bjection to evidence must, as a general thing, be made when it is offered, or its admissibility can not be assigned as error." Moreover, in Tallahassee Furniture Co. v. Harrison, 583 So.2d 744, 754, (Fla. 1st DCA 1991), the Court held that "hearsay evidence not objected to becomes part of the evidence in the case and is useable as proof just as any other evidence, limited only by its rational, persuasive power." Accordingly, Staff agrees with OPC that St. George has waived any objection as to hearsay with regard to the 1978 Bishop study.

OPC also points out that, under Section 120.58(1)(a), Florida Statutes, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding *unless it would be admissible over objection in civil actions.*" (Emphasis added.) According to OPC, the Bishop studies would have been admissible over objection as admissions. Under Section 90.803, Florida Statutes:

> The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:
>
> * * *
>
> **(18) Admissions.** A statement that is offered against a party and is:
>
> (a) His own statement in either an individual or a representative capacity;
>
> (b) A statement of which he has manifested his adoption or belief in its truth;
>
> (c) A statement by a person specifically authorized by him to make a statement concerning the subject;
>
> (d) A statement by his agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationship;
>
> * * *

Staff believes that the Bishop studies would clearly be admissible, over objection, because Mr. Bishop was authorized by St. George to conduct the studies and did, in fact, conduct the studies. In addition, Mr. Brown, one of the utility's principals, adopted the 1978 study under oath.

OPC also argues that the reports are adequately corroborated on the record. Staff agrees. There was plenty of testimony, from Messrs. Seidman and Coloney, and exhibits, such as St. George's 1979 audited financial statement, to corroborate the studies.

Finally, St. George argues that the Commission erred by not including any of the "soft costs" in its determination of original

cost. This is simply not the case. The Commission specifically added engineering and administrative costs to those components for which it determined such costs were not included.

Accordingly, for all the reasons set forth above, Staff recommends that the Commission reject St. George's motion for reconsideration of the original cost issue.

ISSUE 11: Should the Commission grant OPC's cross motion for reconsideration?

RECOMMENDATION: To the extent that it is legally significant, the Commission may wish to reconsider the justification for disallowing fees for TMB Associates. However, to the extent that OPC's cross motion for reconsideration relates to the issue of original cost, it should be rejected because OPC has not identified any error or omission of fact or law. (PIERSON)

STAFF ANALYSIS: In its cross-motion for reconsideration, OPC raises two points. The first is that the Commission should have disallowed expenses for TMB Associates, not because Mr. Brown testified that the utility would not seek to include these costs, but because the utility specifically withdrew its request for them. OPC is correct. Accordingly, to the extent that the Commission finds the distinction to be legally significant, it should reconsider its decision in this regard.

Second, OPC points to what it considers to be "a fundamental misapplication of the law of regulation", namely, the following statement, which appears at page 19 of Order No. PSC-94-1383-FOF-WU:

> We agree with Messrs. Seidman and Coloney that original cost should be based upon what is in the ground.

OPC argues that the Commission needs to consider not only what is in the ground, but who paid for it. OPC argues that St. George's books and records, its financial statements, its federal tax returns, an affidavit of Ms. Withers, Ms. Dismukes testimony, and St. George's annual reports to the Commission, all suggest that the utility only has investment in half of what is in the ground. In support of its claim, OPC provides a cite to the record; however, that cite discusses the so called "soft costs" which St. George argues the Commission failed to consider. This issue has already been discussed in the issue regarding St. George's motion for reconsideration of the original cost issue, above. To the extent that OPC's argument refers to CIAC, Staff notes that issues regarding CIAC have been considered extensively and, where the utility has failed to carry its burden, resolved against it.

St. George argues, in its response to OPC's cross motion for reconsideration, that OPC has not identified any error or omission of fact or law and that the Commission should reject its cross motion in this regard.

Staff agrees with St. George in this regard. The Commission

clearly considered all of the evidence to which OPC refers. OPC, admittedly, is asking that the Commission reweigh the evidence. Staff, therefore, recommends that the Commission reject OPC's cross motion for reconsideration on the original cost issue.

ISSUE 12: Should the Commission grant the Utility's Motion for Extension of Time up to and including February 1, 1995 to complete and file the permit application and fire protection study as ordered in PSC-94-1383-FOF-WU?

RECOMMENDATION: Yes. (AMAYA)

STAFF ANALYSIS: In Order PSC-94-1383-FOF-WU, the Commission ordered St. George to file a copy of its complete permit application addressing the issue of capacity as filed with the Department of Environmental Protection and a copy of its fire protection study. Both were due by January 1, 1995. On December 30, 1994, St. George filed a Motion for Extension of Time within which to complete and file both the permit application and the fire protection study. The Utility is asking that the time be extended to and including February 1, 1995. As the Utility is asking for only a one month delay, Staff believes no harm will be done if the Motion is granted and, therefore, recommends that the Commission grant the Utility's Motion for Extension of Time up to and including February 1, 1995.

ISSUE 13: Should this docket be closed?

RECOMMENDATION: No. (RENDELL)

STAFF ANALYSIS: Order No. PSC-94-1383-FOF-WU requires that this docket remain open until the service availability charge escrow requirement has been released. It is not expected that escrow requirement will be released anytime in the foreseeable future. Therefore, this docket should remain open until the requirements of Order No. PSC-94-1383-FOF-WU are fulfilled.