

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ST. GEORGE ISLAND) DOCKET NO. 871177-WU
 UTILITY COMPANY, LTD. for increased) ORDER NO. 23174
 rates and service availability charges) ISSUED: 7-11-90
 for water service in Franklin County)
)

ORDER DENYING REQUEST FOR RELEASE OF
 FUNDS FROM ESCROW

BACKGROUND

On September 1, 1988, St. George Island Utility Company, Ltd. (St. George or utility) completed the minimum filing requirements for a general rate increase. A formal hearing was held regarding St. George's application on January 12 and 13, 1989, in Apalachicola, Florida.

By Order No. 21122, issued April 24, 1989, this Commission established increased rates and charges for water service. Also by Order No. 21122, among other findings, the Commission determined that the quality of service provided by St. George was unsatisfactory, required St. George to make a number of physical improvements, which included the construction of a third well, and ordered it to place \$1,520 of each connection fee collected, which represents the difference between the previously approved and the currently approved service availability and meter installation charges, into a Commission-approved commercial escrow account.

On June 26, 1990, Staff received a call from the utility requesting the release of \$24,500 to allow the utility to purchase land for a third well site. The utility stated that the contract for the sale of land had been filed with the staff engineer assigned to the case on June 21, 1990 and that before that staff member left on vacation on June 22nd, a decision would be made as to whether the Commission would release funds in escrow to pay for the land. Upon Staff's review of this contract on June 26th, Staff determined that there were, in fact, two contracts for the sale of the land. The first contract was between Ronald Crum and Brenda M. Hicks and the second was between Ms. Hicks and St. George Island Utility Co. The contracts were dated August 20 and 22, 1989, respectively, and were to expire on November 20, 1989 if the deed had not been delivered. Both contracts listed the purchase price as \$25,000, of which a \$500 deposit was paid and the remaining balance of \$24,500 was due on closing. Both contracts had expired.

DOCUMENT NUMBER-DATE
 06115 JUL 11 1990
 PSC-RECORDS/REPORTING

ORDER NO. 23174
 DOCKET NO. 871177-WU
 PAGE 2

The utility further informed Staff that funds had been transferred by wire to the new escrow account at Andrew Jackson Savings & Loan that would be sufficient to cover the \$24,500 requested to be released. When questioned about the source of the funds, the utility responded by stating that the funds transferred were for the CIAC collections owed by third-party sellers of tap fees, and from checks that had been held from prior CIAC collections and not deposited into the Apalachicola National Bank. Further, the utility stated that no verification by Staff was necessary of whether the funds were actually in the account on June 26th, since the bank would not release any funds if there was no money in the account. Staff informed the utility on June 26th that there could be no release of escrow funds until the account balance had been verified, that a valid contract was submitted to the Commission for review, and that the release was approved by the Prehearing Officer.

By telephone on June 27th, Staff verified with Andrew Jackson Savings & Loan that money had in fact been wired to the utility's account in the amount of \$75,000. The bank also informed Staff that the source of the wire was Fleet Financial Corporation in Atlanta and that there was now a third signatory, in addition to Gene Brown and Steve Tribble, required to release funds from the escrow account. Staff then requested to see a copy of the agreement which provided the funds to this account. The utility stated that there was no contract for the purchase of the land since it was negotiated by telephone and that Staff could not review the agreement since it was not utility business. In a subsequent telephone call, the utility stated that there was no note for the portion of the funds from Armada Bay Company, but there was a note related to the \$41,040 related to the third party sellers of the CIAC charges. Upon request, the utility responded that the funds consisted of the following:

27 connection from brokered SAC @ \$1,520	\$41,040
4 connections \$1,520 held in the form of checks not deposited into Apalachicola Nat. Bank	6,080
Armada Bay "Prepaid Escrow"	<u>27,980</u>
Total	<u>\$75,000</u>

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 3

Staff again requested to see a valid contract for sale of the land and the utility stated that there was no contract and only the deed would be transferred. The utility offered that the Staff could witness the closing on June 28th in Apalachicola to determine that the sale would actually take place. Additionally, the cost was now only \$22,500 instead of the original \$24,500. Staff requested to see a copy of the agreement of the funds transferred but the utility responded that there were no liens on utility assets and that the funds were not debt to the utility. The utility would not allow the Staff to see the contract unless the Commission subpoenaed the document. The utility stated that the Staff was acting as an impediment to the utility's attempt to comply with the Commission's order.

The Commission's standard practice is to release escrow funds after documents supporting the request have been reviewed by Staff. Upon discussions with the Prehearing Officer, the Prehearing Officer decided that since no documentation was available for Staff to review, but since it appeared the land was necessary in order for the utility to install the third well for which a consumptive use permit had been received, a modified procedure was necessary. Upon receipt of the signatures of the other two signatories to the escrow account, Staff would take possession of the check drawn from the escrow account, attend the closing, review the closing documents, and release the check if all were in order. This procedure was communicated to and accepted by the utility on June 27, 1990.

Two staff members did attend the closing in Apalachicola. Once there it was learned that the sale was not between the original contract parties. The original seller remained the same but the buyer was now Armada Bay Company, not St. George, as believed. When Staff learned of this, the utility provided a copy of a lease/purchase agreement between Armada Bay Company and St. George, which had been signed but not dated. Staff read this total agreement and determined that there were many areas of potential conflict with the lease/purchase. Further, Staff had not been authorized to release the funds for purchase of the land by other than St. George. Staff then returned to Tallahassee with the cashier's check and redeposited it into the utility's account at Andrew Jackson.

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 4

Subsequently, the utility contacted Staff urging approval of the agreement as being a very good deal and better than anything the utility could get elsewhere. When asked by Staff if the arrangement could be restructured so that the land was titled to St. George, the utility responded "no." Staff told the utility that its position would be relayed to the Prehearing Officer for a determination.

DECISION

Upon review of the documentation, appended hereto as Attachment A, it does not appear that the arrangement to acquire the third well is a prudent management decision. According to these documents, customer contributions will be used to purchase land and to lease and/or purchase utility assets that will not be titled in the utility's name. This is not in the best interest of either St. George or its customers. Our policy is for the utility to own the land, or have uninterrupted access to the land, on which its facilities are located. In a lease situation, the Commission usually requires a 99-year lease. This protects the customers. The lease-purchase agreement here raises many questions and concerns, such as: the \$24,000 management fee for the first year; assignment to Armada Bay of \$1,750 of each connection fee received after July 1, 1991; the \$200,000 valuation by Armada Bay and St. George of the well-site and improvements since the support documentation shows \$22,500 for the land and \$42,500 for a ground storage tank; and why the utility did not simply purchase the land outright with the escrow money and obtain a loan or execute a developer's agreement since "pre-paid escrow" was available and parties were thus identifiable with whom a developer's agreement could have been executed. Accordingly, its request for release of escrowed funds for the land for the third well is hereby denied.

It is, therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the request by St. George Island Utility Company, Ltd. for release of \$24,500, for land for the third well required by Order No. 21122, is hereby denied.

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 5

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 11th day of July, 1990.


BETTY EASLEY, Commissioner and
Prehearing Officer

RJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 6

ATTACHMENT A
Page 1 of 7

LEASE PURCHASE AGREEMENT

This Agreement, made and entered into this ___ day of June, 1998, by and between ARMADA BAY COMPANY, a Florida corporation, Lessor, (Armada Bay), and ST. GEORGE ISLAND UTILITY COMPANY, LTD., a Florida limited partnership, Lessee, (St. George).

WITNESSETH:

In consideration of the mutual covenants contained herein and for other good and valuable considerations, the parties agree as follows:

1. Armada Bay hereby leases to St. George the following described property:

Lot 1, Block 9, David H. Brown Estates, addition to Eastpoint, Florida, a subdivision as per map or plat thereof, recorded in Plat Book 3, page 4 of the Public Records of Franklin County, Florida.

upon the following terms and conditions:

(a) TERM: The term of this Lease shall be seven (7) years commencing July 1, 1991 and ending June 30, 1998.

(b) ANNUAL RENTAL: The rental for the above-described property shall be Twenty Eight Thousand, One Hundred Ten Dollars (\$28,110) per year for seven years beginning July 1, 1991, payable at the rate of Two Thousand, Three Hundred Forty Two Dollars and fifty cents per month (\$2,342.50) beginning on July 1, 1991, and continuing to be paid each month thereafter to and including June 1, 1998.

(c) USE OF PREMISES: The property will be used as a deep well site to be operated as an integral part of the St. George Island water system which site shall include an 8" well, high speed turbine pump, 50,000 gallon reservoir and other improvements to be constructed by Armada Bay as set forth below.

2. CONSTRUCTION OF IMPROVEMENTS: Within one year from date, Armada Bay will construct an 8" deep well on the above described property in accordance with plans and specifications to be provided by St. George. Within such one year period,

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 7

ATTACHMENT A
Page 2 of 7

Armada Bay will also construct a 50,000 gallon ground storage reservoir in accordance with the existing contract with Jack Ethridge Tank Company, as shown by Exhibit "A" attached hereto, which contract is hereby assigned by St. George to Armada Bay. Within such one year period, Armada Bay will also install a high speed turbine service pump capable of producing a water flow of not less than 600 gallons per minute through St. George's existing 8" water line to St. George Island, together with certain other appurtenances as detailed in the engineering plans and specifications by Wayne H. Coloney, Consulting Engineer for St. George. The parties acknowledge and agree that the above-referenced well site and improvements have a value of \$200,000. Of this total sum, St. George will provide Armada Bay with \$75,000 cash to be paid immediately upon release of such funds from the escrow account to be established in the name of St. George Island Utility Company, Ltd. The balance of the cost, \$125,000, will be paid by Armada Bay as the improvements are made to the property over the next twelve months. The monthly payments of \$2,342.50 represent a seven year amortization of such \$125,000 cash requirement at 14%.

3. CONSTRUCTION MANAGEMENT FEE: As consideration for this Lease Purchase Agreement, St. George will pay Armada Bay a construction management fee of \$24,000 payable at the rate of \$2,000 per month for the next twelve months commencing July 1, 1990 and continuing to be paid on the first of each month for the next eleven months until the total \$24,000 fee is paid in full.

4. PURCHASE OPTION: Upon the expiration of this Lease Purchase Agreement, St. George shall have the right to buy the above-described property and all improvements constructed thereon for the sum of One Dollar (\$1.00). St. George may exercise this option by giving Armada Bay thirty (30) days written notice prior to the expiration of the lease; and Armada Bay will immediately

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 8

ATTACHMENT A
Page 3 of 7

convey the subject property and all improvements to St. George via a general warranty deed free and clear of all encumbrances.

5. PLEDGE OF TAP FEES: As additional security for this Lease Purchase Agreement, St. George hereby assigns to Armada Bay the sum of One Thousand, Seven Hundred Fifty Dollars (\$1,750.00) from each connection fee which it receives after the commencement of payments under this lease, to-wit: July 1, 1991, which connection fees will be applied as a prepayment of the principal balance remaining on the above referenced lease. When said connection fee payments of \$1,750.00 each and the monthly payments of \$2,342.50 each have repaid to Armada Bay the sum of \$125,000 together with interest at 14% from the date of this lease, Armada Bay will give St. George written notice that such repayment of all principal and interest has occurred, and St. George shall thereafter have thirty (30) days within which to exercise its option to purchase the property and all improvements for \$1 as set forth above.

6. OPERATING RESPONSIBILITY: During the term of this lease, St. George shall have exclusive possession of the above-described property and all improvements thereon, and shall be responsible for the operation and maintenance of all such assets. St. George shall also be responsible for and shall pay all costs incurred in regard to the possession and operation of the premises, as well as all property taxes and assessments which may be levied against said property. Also, St. George shall maintain insurance covering the premises, including not less than \$100,000/\$300,000 liability coverage to insure the risk that Armada Bay may have as the legal title holder of the property.

IN WITNESS WHEREOF, the parties have signed this Lease Purchase Agreement on the day and year first above written.

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 9

ATTACHMENT A
Page 4 of 7

Witnesses:

Gene D. Brown
Sandra M. Chase

ARMADA BAY COMPANY, a
Florida Corporation

By: Gene D. Brown
Gene D. Brown, as its
President

ST. GEORGE ISLAND UTILITY
COMPANY, LTD., a Florida
limited partnership

Leisure Properties, Ltd.,
a Florida limited partnership
GENERAL PARTNER

Gene D. Brown
Sandra M. Chase

By: Gene D. Brown
St. George's Plantation, Inc.,
a Florida corporation
Gene D. Brown, as its Pres.

Gene D. Brown
Sandra M. Chase

By: Gene D. Brown
Leisure Development, Inc.,
a Florida corporation
Gene D. Brown, as its Pres.

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 10

ATTACHMENT A
Page 5 of 7



Phone 904 266-9263 Alt. Hours 266-9285

JACK ETHRIDGE TANK COMPANY, INC.

Complete Tank Maintenance and Erection

RT. 1, BOX 528, BRYCEVILLE, FLORIDA 32009



September 19, 1989

St. George Island Utility Company, Limited
3826 Killearn Court
Tallahassee, Florida 32308
Attn: Mr. Gene Brown

The following is a proposal to furnish and erect one 50,000 gallon steel ground storage tank including foundations and piping at St. George Island, Florida.

Foundations to be designed after review of soil test furnished by owner.

Tank will be AWWA approved and coordinated with the paint system and specifications outlined in our agreement for the 150,000 gallon sphere water tank. Owner will furnish water for testing.

Jack Ethridge Tank Company, Inc. will furnish our standard limits of insurance, labor, materials and equipment to complete this project for a total of \$43,500.00 (Forty Three Thousand Five Hundred Dollars). Our price includes all engineering and permits to meet all local, state and federal governmental requirements including wind-loading and DER recu. An additional 45 days will be need to complete the 50,000 gallon tank making a total completion time of both tanks 165 days after approval of foundation drawings.

Payment schedule as follows.

25%	- Upon delivery of the tank -----	\$10,375.00
25%	- Foundations-----	\$10,375.00
25%	- Upon completion of erection -----	\$10,375.00
25%	- Testing and painting -----	\$8,775.00
	Total	<u>\$40,900.00</u>

Please sign and return the original.

Jack Ethridge
Jack Ethridge, President

Gene D. Brown
Gene D. Brown

File

EXHIBIT "A"

ORDER NO. 23174
DOCKET NO. 871177-WU
PAGE 11

ATTACHMENT A
Page 6 of 7

This instrument was prepared by:

LINDA MALDY, AN OFFICER OF
DODD TITLE COMPANY, INC.
P. O. BOX 38, APALACHICOLA, FL
32320, pursuant to the issuance
of Title Insurance

Warranty Deed

 (STATUTORY FORM—SECTION 689.02 F.S.)

This Indenture, Made this 28th day of June 1990, Between

RONALD J. CRUM and SHIRLEY A. CRUM, his wife

of the County of Franklin, State of Florida, grantor, and

ARMADA BAY COMPANY, a Florida Corporation

whose post office address is P.O. Box 1109, Tallahassee, Florida 32308

of the County of Leon, State of Florida, grantee.

Witnesseth, That said grantor, for and in consideration of the sum of -----

-----TEN (\$10.00)----- Dollars,
and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby
acknowledged, has granted, bargained and sold to the said grantee, and grantee's heirs and assigns forever, the following
described land, situate, lying and being in Franklin County, Florida, to-wit:

Lot 1, Block 9, David Brown Estates, addition to Eastpoint, Florida,
a subdivision as per map or plat thereof recorded in Plat Book 3, page
4 of the public records of Franklin County, Florida.

and said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all
persons whomsoever.

* "Grantor" and "grantee" are used for singular or plural, as context requires.

In Witness Whereof, Grantor has hereunto set grantor's hand and seal the day and year first above written.
Signed, sealed and delivered in our presence:

Linda Maldy
Witness
Dee Smith
Witness

Ronald J. Crum (Seal)
RONALD J. CRUM
Shirley A. Crum (Seal)
SHIRLEY A. CRUM

(Seal)

(Seal)

STATE OF Florida
COUNTY OF Franklin

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared

RONALD J. CRUM and SHIRLEY A. CRUM, his wife

to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that
he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 28th day of June
1990.

My commission expires:

Linda Maldy
Notary Public

ORDER NO. 23174
DOCKET NO. 871177-WU
Page 12

ATTACHMENT A
Page 7 of 7

DODD TITLE COMPANY INC. DODD FILE #12438
REAL ESTATE SETTLEMENT
BUYER CLOSING STATEMENT
BSD CLOSING

BUYER: ARMADA BAY COMPANY BROKER:
LEGAL: LOT 1 BLK 9 DAVID BROWN ESTATES
CLOSING DATE: JUNE 28, 1990

HEADINGS	DEBITS	CREDITS
PURCHASE TERMS:		
PURCHASE PRICE	\$ 22,500.00	
PRORATIONS:		
COUNTY TAXES		\$ 36.28
EXPENSES:		
RECORD DEED	\$ 6.00	
TITLE INSURANCE	\$ 200.00	

TOTALS	\$ 22,706.00	\$ 36.28
BAL DUE FROM BUYER		\$ 22,669.72

GRAND TOTALS	\$ 22,706.00	\$ 22,706.00

STATEMENT PREPARED BY: DEE
DATE: JUNE 28, 1990

1, THE BUYER, HEREBY RECEIPT FOR AND AGREE TO ALL STATEMENTS THAT APPEAR ON THIS, THE BUYER'S, CLOSING STATEMENT.

x Armada Bay Company _____ 6/28/90
 (signature of Buyer) (social security number) (date)
 by Deedee Van der