

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ST. GEORGE ISLAND) DOCKET NO. 871177-WU
 UTILITY COMPANY, LTD. for increased rates)
 and service availability charges for water) ORDER NO. 24322
 service in Franklin County)
 _____) ISSUED: 4/3/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

ORDER REJECTING PROPOSED MODIFICATION
OF SETTLEMENT AND REQUIRING PAYMENT
OF PENALTY ON OR BEFORE THE CLOSE OF
BUSINESS ON FRIDAY, APRIL 5, 1991

BY THE COMMISSION:

By Order No. 21122, issued April 24, 1989, this Commission established increased rates and charges for St. George Island Utility Company, Ltd. (St. George). Also by Order No. 21122, we found that the quality of service provided by St. George was unsatisfactory, imposed a moratorium against further connections, and mandated certain physical and recordkeeping improvements. Finally, by Order No. 21122, we informed St. George that if the improvements were not made within specified time periods, we would require it to show cause why it should not be fined.

By Order No. 23038, issued June 6, 1990, we determined that St. George had apparently not complied with the requirements of Order No. 23038 and ordered it to show cause why it should not be fined for the alleged violations. St. George filed a timely response and, therefore, the matter was set for hearing.

On September 13, 1990, St. George filed a proposed stipulation in settlement of the show cause matters. We approved the proposed settlement by Order No. 23649, issued October 22, 1990. Under the terms of the settlement, we fined St. George \$50,000 for all of the alleged violations, \$45,000 of which was suspended pending its

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completion of an elevated storage tank. The remaining \$5,000 of the fine was to be paid within 60 days, or no later than December 21, 1990. St. George did not make payment by that date.

By letter dated January 8, 1990, a copy of which is appended to this Order as Attachment 1, the Staff of this Commission reminded St. George of its obligation and requested payment within ten days. St. George responded by letter dated January 30, 1991, a copy of which is appended as Attachment 2 to this Order, which stated that St. George did not have the funds to pay the fine, and requested that it be allowed to pay the fine in monthly increments of \$1,000 until paid in full. We note, however, that if St. George had made a good-faith effort to abide by its proposal, we would already have \$3,000 of the fine. We do not.

Considering its prior history with regulatory agencies, we are not convinced that a payment plan would be effective with St. George. We are informed that St. George still owes a consent penalty to DER, and there are two dockets open at this Commission regarding St. George's alleged failure to comply with the terms of a refundable advance agreement between it and the Department of Natural Resources.

Finally, we note that the settlement proposal, including the terms of its payment of the fine, were proposed by St. George. Accordingly, St. George should have planned for the penalty or at least have been able to foresee whether the payment terms were realistic. In any event, we note that St. George has already had, as of the date of our vote on this matter, 162 days, or 102 days over the 60 days originally proposed by it, to pay the fine. We also note that St. George made no attempt to pay the fine or to try to arrange any alternative payment terms until after Staff's letter of January 8, 1991. Further, although Staff requested payment within ten days, St. George did not even respond for twenty-two days, and then, with a proposal to modify the terms of its own settlement agreement. St. George must know by now that only the Commission itself, and not Staff, can modify the terms of an approved settlement. It appears to us as if St. George has merely manipulated the process to buy some time.

Based upon our discussion above, we find it appropriate to reject St. George's proposal to modify the terms of the settlement. St. George shall, therefore, remit the entire amount of the fine, or \$5,000, no later than by the close of business on Friday, April

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5, 1991. If we do not receive the full amount by that time, a further penalty of \$500 per day shall begin to accrue for each day that the penalty remains unpaid.

It is therefore

ORDERED by the Florida Public Service Commission that St. George Island Utilities Company, Ltd.'s proposed modification of the settlement approved by this Commission by Order No. 23649 is hereby rejected. It is further

ORDERED that St. George Island Utilities Company, Ltd. shall remit the full amount of the penalty due, or \$5,000, to this Commission no later than by the close of business (4:45 p.m.) on Friday, April 5, 1991. It is further

ORDERED that, if St. George Island Utilities Company, Ltd. does not remit the full amount of the penalty due on or before April 5, 1991, an additional penalty of \$500 shall begin to accrue for each day that the \$5,000 penalty remains unpaid.

By ORDER of the Florida Public Service Commission, this
3rd day of APRIL, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Johnson
Chief, Bureau of Records

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.