

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ST.)
GEORGE ISLAND UTILITY COMPANY,)
LTD. for increased rates and)
service availability charges)
for water service in Franklin)
County)
_____)

DOCKET NO. 871177-WU
ORDER NO. PSC-92-1061-PHO-WU
ISSUED: 09/24/92

Pursuant to Notice, a Prehearing Conference was held on September 24, 1992, in Tallahassee, Florida, before Commissioner Betty Easley, as Prehearing Officer.

APPEARANCES:

GENE D. BROWN, Esquire, 3848 Killearn Court, Tallahassee, Florida 32308
On behalf of St. George Island Utility Company, Ltd.

CATHERINE BEDELL, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

PRENTICE PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners

PREHEARING ORDER

I. CASE BACKGROUND

By Order No. 23258, issued July 27, 1990, this Commission required St. George Island Utility Company, Ltd. (SGIU or utility) to, "exercise its option on the elevated storage tank and tank site prior to the expiration of the lease/purchase contract." Based on Commission records, the date of expiration was February 7, 1992. A warranty deed for the subject property was recorded in Franklin County on February 12, 1992. The recorded warranty deed indicates that title to the subject land and the storage tank was recorded in the name of Regional Land Corporation. Because the failure of St. George Island Utility Company, Ltd. to timely exercise the option to purchase the land violated the provisions of Order No. 23258, we issued Order No. PSC-92-0488-FOF-WU, requiring SGIU to show cause why it should not be fined up to \$5,000 per day, pursuant to Section 367.161, Florida Statutes. On June 30, 1992, SGIU timely filed a response to Order No. PSC-92-0488-FOF-WU requesting a

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hearing. Therefore, this matter has been set for administrative hearing in Tallahassee, Florida on October 20, 1992.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so

answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Gene D. Brown	Utility	1, 2, 3
A. L. Buford, Jr.	Staff	1
<u>Rebuttal</u>		
Joe Boyd	Utility	1
James O. Shelfer	Utility	1

V. BASIC POSITIONS

SGIU: The only "option" involved in this matter was extended for one year by agreement of all the parties to the option. The optionor, Armada Bay Company, was the beneficial and equitable owner of the property after February 7, 1992. The utility was never in jeopardy of losing its option to acquire such ownership. In fact, the utility has acquired title to the elevated tank and tank site with no inconvenience to any customer, and there was never any threat of interrupted service to any customer. If the utility had exercised the option in February of 1992, a judgement lien would have attached and title to the property would have been lost to an adverse party via a sheriff's sale. Accordingly, the utility had a good and valid reason for extending the option. In any event, there was no willful failure on refusal to comply with any order of this Commission.

STAFF: The information gathered through discovery and prefiled testimony indicates, at this point, that the utility failed to comply with Order No. 23258, issued July 27, 1990, and it should be required to pay a penalty for said violation.

VI. ISSUES AND POSITIONS

ISSUE 1: Did St. George Island Utility Company, Ltd. violate the provisions of Order No. 23258 by failing to exercise its option to purchase the elevated storage tank and tank site prior to February 7, 1992, the expiration date of the lease/purchase contract?

POSITIONS

SGIU: No, the option was extended and exercised before it expired.

STAFF: Yes, the utility failed to comply with Order No. 23258.

ISSUE 2: If so, is it appropriate to levy a penalty pursuant to Section 367.161, Florida Statutes, for failure to comply with Order No. 23258?

POSITIONS

SGIU: No, there was no willful failure or refusal to comply with order No. 23258 as required by Section 367.161 of the Florida Statutes.

STAFF: Yes, it is appropriate to levy a penalty for failure to comply with Order No. 23258.

ISSUE 3: If it is appropriate to levy a penalty, what amount should be levied?

POSITIONS

SGIU: If the Commission decides a fine is appropriate, it should not exceed \$1,000.

STAFF: Pursuant to Section 367.161, Florida Statutes, a penalty of not more than \$5,000 per day for the period of time that the utility was not in compliance with Order No. 23258, should be levied against the utility.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Brown	SGIU	GDB-1	Amendment and Extension of Sublease and Operating Agreement between the utility and Armada Bay Company.
Buford	Staff	ALB-1	Warranty Deed, dated February 10, 1992, from Homer A. Brinkley to Regional Land Corporation.
		ALB-2	Closing Statement, Modification of Note and Mortgage, Quitclaim Deed, and Special Warranty Deed, dated May 29, 1992 between Regional Land Corporation and St. George Island Utility Company, Ltd/Armada Bay Company.
		ALB-3	Collateral Assignment of lease purchase agreement between Brinkley and Armada Bay, dated March 22, 1990.
		ALB-4	Agreement to Provide Water Service between St. George Island Utility Company, Ltd. and Andrew Jackson Savings Bank, dated March 15, 1990.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Buford	Staff	ALB-5	Letter to Charles H. Hill from Gene D. Brown, dated August 9, 1992, Letter to Armada Bay Company from Gene D. Brown, dated August 8, 1992, and a Notice of Intent to Exercise Option between Armada Bay Company and St. George Island Utility Company, Ltd., dated August 9, 1992.
		ALB-6	Lease-Purchase Agreement between Homer A. and Robert T. Brinkley and Armada Bay Company, dated February 8, 1990.
		ALB-7	Promissory Note between Armada Bay Company, St. George Island Utility Company, Ltd. and Regional Land Corporation, dated March 22, 1990.
		ALB-8	Mortgage and Security Agreement between St. George Island Utility Company, Ltd. Armada Bay Company and Regional Land Corporation, dated March 22, 1990.
		ALB-9	Sublease and Operating Agreement between Armada Bay Company and St. George Island Utility Company, Ltd., dated February 8, 1990.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Buford	Staff	ALB-10	Escrow Agreement between First Florida Bank, N.A., St. George Island Utility Company, Ltd. and Andrew Jackson Savings Bank, dated March 15, 1990.
		ALB-11	Letter from Jack Ethridge of Jack Ethridge Tank Company, Inc. to St. George Island Utility Company, Ltd. dated September 19, 1989.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations.

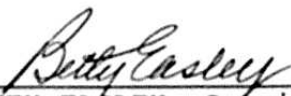
IX. PENDING MOTIONS

There are no pending motions.

It is therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 24th day of September, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

BE/CB

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 wastewater 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.