



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

FILED
MAR 17 1994

March 17, 1994

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. [REDACTED]

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceedings on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Motion to Compel.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean
Associate Public Counsel

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- ACK 2
- ADM _____
- ASST _____
- CLERK _____
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- INFO _____
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- OTHER _____

Enclosures

DOCUMENT NUMBER-DATE

02568 MAR 17 94

FPSC-RECORDS/REPORTING

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. 940109-WU

Filed March 17, 1994

To: Prehearing Officer
Commissioner Julia L. Johnson

MOTION TO COMPEL

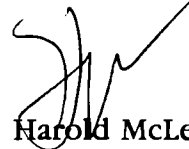
The Citizens of the State of Florida (Citizens) by and through JACK SHREVE, Public Counsel, move the prehearing officer under the provisions of Rule 1.380(a)(2) Fla. R. Civ. P. to enter her order compelling ST. GEORGE ISLAND UTILITY COMPANY, LTD. (SGU) to comply forthwith with discovery and show that:

1. On February 11, 1994, the Citizens filed Interrogatories and requests for production of documents upon SGU, the responses to which were due March 14, 1994;
2. SGU's compliance with discovery is virtually non-existent. An account of the lack of compliance with discovery is offered by way of the affidavit of Kimberly H. Dismukes, which attached as EXHIBIT A to this motion;

3. The failure of SGU to comply with lawful discovery from the Citizens inures to the extreme prejudice of the Citizens because it diminishes the Citizens' opportunity to determine to what extent its interests may be affected by eventual agency action and thus diminishes the effectiveness of the Citizens' point of entry into the administrative process.
4. The failure of SGU to comply with discovery is characteristic of SGU's behavior in the following Dockets: No. 930770-WU, (wherein timely discovery was virtually ignored and in which SGU's application was dismissed for failure to comply with Commission rules); No. 920318-WU (which addresses the utility's chronic failure to pay--although it did collect--its regulatory assessment fees for the years 1988, 1989, 1990, 1991, 1992 and 1993); No. 920782-WU (in which the revocation of the utility's water certificate is under consideration).
5. Any failure of the prehearing officer to directly and unequivocally order SGU to forthwith comply with discovery will be thoroughly and effectively exploited by this utility. Because the effectiveness of the Citizens' point of entry into the administrative process is at issue, the Citizens attach as EXHIBIT B to this motion an appropriate *Order Compelling Discovery* which the Citizens move be executed and issued forthwith.

WHEREFORE, the Citizens of the State of Florida, move the prehearing officer for an order compelling ST. GEORGE ISLAND UTILITY COMPANY, LTD. to answer each of the referenced interrogatories forthwith; and to comply with each referenced request for production of documents forthwith.

Respectfully submitted,



Harold McLean
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street.
Room 812
Tallahassee, FL 32399-1400

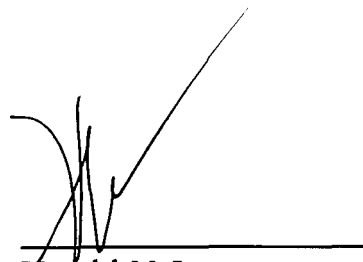
Attorney for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 940109-WU**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished
by U.S. Mail or hand-delivery to the following parties on this 17th day of March, 1994.

J. Lorenzo
Division of Legal Services
Florida Public Service Commission
101 E. Gaines St.
Tallahassee, FL 32301

Gene D. Brown, Esq.
3848 Killearn Court
Tallahassee, FL 32308

A handwritten signature in black ink, appearing to read 'Harold McLean', is written over a horizontal line. The signature is stylized with a large initial 'H' and a long, sweeping stroke extending upwards and to the right.

Harold McLean
Associate Public Counsel

EXHIBIT A

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF LEON

Before me the undersigned authority, authorized to administer oaths in said county and state, on this day personally appeared Kimberly H. Dismukes, who upon her oath deposes and stated:

1. My name is Kimberly H. Dismukes. I am a legislative analyst with the Office of the Public Counsel authorized to make this affidavit.

2. On March 16, 1993, Walt Baer and I visited the Company's office to obtain responses to Public Counsel's first set of interrogatories and requests for production of documents. (Both of which were due on March 14th, 1994.) At attendance at our meeting was myself, Walt Baer, Mr. Gene Brown, Ms. Sandra Chase, Ms. Barbara Whithers, and Ms. Ann Hill.

3. We arrived at the Company's office at 9:00 a.m., as suggested by Mr. Brown in his attached letter of March 14, 1994. At that time the Company did not provide responses to our first set of interrogatories. Mr. Brown and Ms. Chase said that the response to our interrogatories would be provided at the end of the day.

4. Mr. Brown and his associates provided for our review and inspection those documents that were readily available and indicated that the remainder would be provided as the information was gathered. By the close of the day, we had not been given access to review the documents identified in the following document requests: 10, 11, 12, 13, 14, 15, 19, 20, 21,

23, 24, 25, 26, 30, 32, 33, 34, 37, 39, 46, 50, 58, 59, and 60.¹

5. Before departing for the day, at about 4:30 p.m. I again inquired of Ms. Chase as to the Company's responses to our interrogatories. Ms. Chase informed me that the interrogatory answers were not available.

SWORN TO AND SUBSCRIBED before me on the ____ day of March, 1994.

Kimberly N. Desmunes

Lynda Kelly
Notary Public

LYNDA KELLY

Printed Name of Notary Public

Notary
Title



LYNDA KELLY
MY COMMISSION # CC323136 EXPIRES
October 26, 1997
BONDED THRU TROY FAIN INSURANCE, INC.

State of Florida at Large
My Commission Expires: _____

¹ Document Requests 3, 4, 5, and 7 were not provided, however, we agreed to this because the Company committed to providing these documents through December 1993 with all adjusting and closing entries on Friday March 18, 1994. The Company also provided a partial response to document request 24.

Law Offices of
GENE D. BROWN

3848 KILLEARN COURT
TALLAHASSEE, FLORIDA 32306

TELEPHONE (904) 868-6103
TELECOPIER (904) 868-0441

March 14, 1994
VIA FAX (904)488-4491

Mr. Harold McLean
Associate Public Counsel
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Re: St. George Island Utility Company, Ltd.
Petition for Interim and Permanent Rate Increase

Dear Mr. McLean:

I am sorry that we were not able to talk by phone today. I was told you were away from your desk but I have not received a return call.

The purpose of the call was to arrange a mutually convenient time and place for the utility to produce the documents which you have requested. I would suggest this Wednesday or Thursday in our office, commencing at 9:00 a.m. on either day. I object to a blanket production of all of the affiliates' tax returns and financial records. However, I am willing to provide an opportunity for you and your associate to examine all of these tax returns and records, and to obtain copies of any parts of such tax returns or financial records that are pertinent and relevant under the Commission rules. This is the procedure which I recently followed with the PSC audit staff, and I believe it is reasonable for both parties under the circumstances.

I will have the answers to your interrogatories ready for delivery to you at the time the documents are produced for inspection and copying. The answers will be substantially complete, although there are a few questions that we are not able to answer for reasons which will be explained in our responses.

Please let me know as soon as possible whether you prefer Wednesday or Thursday morning, or some other time that we can arrange.

Sincerely,



Gene D. Brown

EXHIBIT B RECOMMENDED ORDER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

<i>In Re:</i> Petition for Interim and)	DOCKET NO. 940109-WU
Permanent Rate Increase in)	ORDER NO. PSC-94-__-PCO-WU
Franklin County, Florida by)	ISSUED: March __, 1994
ST. GEORGE ISLAND UTILITY)	
COMPANY, LTD.)	
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**ORDER GRANTING THE CITIZENS' MOTION
TO COMPEL Discovery RESPONSES**

On February 11, 1994, the Citizens of the State of Florida (Citizens) served interrogatories and requests for production of documents upon St. George Island Utility Company, Ltd. (SGU) The responses were due under the appropriate Florida Rules of Civil Procedure, on March 14, 1994. On March 17, 1994, the Citizens filed a Motion to Compel Discovery responses from SGU.

SGU's "compliance" amounted to a letter from SGU to Counsel for the Citizens which made vague promises, offers, (none of which were honored) and even more nebulous objections to unspecified aspects of the tendered Discovery. In short, the Discovery requests were all but ignored by SGU, and the right to object the Discovery in question waived.

Efficient use of Commission time and resources, considerations of due process to all parties concerned, and numerous provisions of the rules of this Commission and of the Administrative Procedures Act require prompt and good faith adherence to the various requirements of Discovery, not the least of which is to provide full and complete answers to Discovery or to plainly state objections thereto within the time provided by the Florida Rules of Civil Procedure.

SGU has an extensive history of frustrating the regulatory authority of this Commission as is thoroughly discussed in Dockets 930770-WU, 920318-WU, and 920782-WU. The current failure of SGU to honor its obligations to provide Discovery responses is consistent with the utility's behavior in the past. Dismissal of a cause of action, as a sanction for failure to comply with Discovery orders, is a harsh sanction to be reserved for extraordinary circumstances. It is clear, however, we cannot sit idly to one side as SGU ignores yet another requirement of Commission, to the detriment of the other parties in this docket, and to the ultimate detriment of the integrity of this process.

Taken in context of a utility which has time and again flaunted the authority and trust of this Commission, it is,

ORDERED by Commissioner Julia L. Johnson, as prehearing officer, that St. George Island Utility Company, Ltd. shall, within three (3) days of the date of this order, fully comply with each Discovery request filed by the Citizens on February 11, 1994, and their failure to do so shall result in the immediate dismissal of their current rate application on file with this Commission without further order of this Commission.

By ORDER of Commissioner Julia L. Johnson as Prehearing Officer, this __ day of March, 1994.

Julia L. Johnson, Commissioner and
Prehearing Officer

DRAFT