



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

ORIGINAL
FILE COPY

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

March 21, 1994

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

Re: Docket No. 940109-WH

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' Objection to Interim Rates.

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

RECEIVED & FILED

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Enclosures

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ITEM 43, MARCH 22 AGENDA

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

<i>In Re:</i> Petition for Interim and)	Docket No. 940109-WU
Permanent Rate Increase in)	
Franklin County, Florida by)	Filed: March 21, 1994
ST. GEORGE ISLAND UTILITY)	
COMPANY, LTD.)	
_____ /		

OBJECTION TO INTERIM RATES

SUMMARY

The Citizens object to the award of interim rates to SGU because:

- ▶ The Commission has an open Docket which seeks to revoke SGU's authority to provide service;
- ▶ The Commission has an open Docket faulting SGU for failure to pay regulatory assessment fees in which the credibility of SGU is seriously questioned;
- ▶ Because SGU frequently does not honor Commission orders, the Commission cannot protect interim revenue should a refund ever be required;
- ▶ The Commission has pending before it the Citizens' motion to compel discovery in which the Citizens suggest dismissal of SGU's application for rate relief; and,
- ▶ SGU is currently insulated from regulatory lag by its holding sums of money presently owing to the Commission.

ARGUMENT

The Citizens of the State of Florida, by JACK SHREVE, Public Counsel, (Citizens) object to the award of an interim rate increase to St. George Island Utility Company, Ltd., (SGU) and as grounds therefor say:

1. The Citizens are in receipt of a notice and staff recommendation each of which indicate that the Commission will consider an interim rate increase for SGU in the above-styled Docket at its regular agenda conference on March 22, 1994.
2. Docket No. 920782-WU, styled "Revocation by Florida Public Service Commission of Certificate No. 302-W issued to St. George Island Utility Company, Ltd. in Franklin County", in which the Commission is seeking the revocation of the authority of this utility to provide service,¹ is pending before the Commission
3. Docket No 920318-WU, styled "Initiation of proceeding by Florida Public Commission to Require St. George Island Utility Company, Ltd. in Franklin County to Escrow Funds for Payment of Regulatory Assessment Fees" is pending before the Commission. This Docket orders SGU to show cause why it should not be fined for its failure to pay regulatory assessment fees to

¹ On October 13, 1993, prehearing officer, Commissioner Luis J. Lauredo, entered order No. PSC-93-1494-PCO-WU which held this docket in abeyance until docket No. 930770-WU was concluded. Docket No. 930770-WU was concluded by Order PSC-93-1735-FOF-WU which dismissed the then pending rate proceeding for SGU's violation of a variety of Commission rules. The revocation Docket is pending at this time.

the Commission. The order finds, among other things, that SGU collected money for the fees from the customers, but did not pay it to the Commission. Because the order presents a vivid portrait of SGU's chronic flaunting of Commission authority, and of SGU's lacking credibility, it is attached as EXHIBIT A to this objection.

4. Any award of interim rates is necessarily based in part on data furnished by SGU. A reading of Exhibit A to this objection will show that the utility has on more than one occasion certified to this Commission that payments were made into an escrow when the payments were not made. There is no evidence before the Commission to suggest that SGU observed any higher standard when it submitted data to the Commission upon which the interim rate award is necessarily based. Moreover, nothing in the interim statutes requires the Commission to accept as true data filed by the utility. Interim revenues are traditionally and statutorily protected by some form of assurance that a refund will be had in the event that the interim revenues are found inappropriate. Given SGU's lack of compliance with Commission orders, neither the Citizens nor the Commission can be assured that interim revenue is protected in any way.
5. The Citizens motion to compel discovery, filed March 15, 1994, which addresses SGU's failure to provide discovery responses within the time

provided by Commission rule², is pending before prehearing Officer Julia L. Johnson. In their motion, the Citizens suggest a procedure which could result in the dismissal of SGU's rate application.

6. Interim rates, in essence, are designed to avoid the effects of regulatory lag by granting a utility some relief during the pendency of its rate application. Although SGU collects money to pay regulatory assessment fees but does not pay those fees to the Commission, its relief and insulation from regulatory lag is self-provided and its need for interim relief is not necessary.

WHEREFORE, the Citizens of the State of Florida object to an award of interim rates to St. George Island Utility Company, Ltd.

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

² Some measure of compliance has been extracted by the Citizens by means of visiting SGU's Tallahassee office and by manually searching through the utility's records. Discovery responses, as of this writing, were late and inadequate.

**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 21st day of March, 1994.

José 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 be 'H. McLean', written over a horizontal line.

Harold McLean
Associate Public Counsel

EXHIBIT 'A'

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Proceeding) DOCKET NO. 920318-WU
by Florida Public Service) ORDER NO. PSC-94-0088-FOF-WU
Commission to Require ST. GEORGE) ISSUED: January 25, 1994
ISLAND UTILITY COMPANY, LTD. in)
Franklin county to Escrow Funds)
for Payment of Regulatory)
Assessment Fees.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Pursuant to Section 367.145(1), Florida Statutes, the Commission is required to set a regulatory assessment fee that each utility must pay once a year in conjunction with filing its annual financial report. Rule 25-30.120(1), Florida Administrative Code, requires each utility to pay regulatory assessment fees based upon its gross operating revenue. Beginning January 1, 1991, each utility is required to pay a fee in the amount of four and one-half percent for the entire year.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a penalty shall be assessed against any utility that fails to pay its regulatory assessment fees by March 31, in the following manner:

1. An assessment of 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent.

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2. The amount of interest to be charged is 1% for each thirty days or fraction thereof, not to exceed a total of 12% per annum.

In addition, pursuant to Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner in accordance with Section 367.161, Florida Statutes.

In the establishment of rates, this Commission includes in its determination of the revenue requirements for a utility the utility's obligation to pay regulatory assessment fees. In that way, the utility is authorized to collect the amount of regulatory assessment fees it must pay.

1988 - 1990 REGULATORY ASSESSMENT FEES

On January 30, 1990, St. George Island Utility Company, Ltd. (St. George or utility) paid the \$25 minimum regulatory assessment fees for 1989 for its wastewater system. However, no payment of regulatory assessment fees for 1989 was made for the water system. On November 14, 1990, St. George was notified that additional regulatory assessment fees were due for 1989, including penalties and interest. On December 6, 1990, the utility objected to the penalty and interest charges, and requested a waiver of the penalty and interest charges and of the payment schedule. In Order No. 24290, issued March 26, 1991, we denied the utility's request for waiver of penalties and interest. In addition, we ordered the utility to pay all outstanding regulatory assessment fees with penalties and interest according to a proposed payment schedule, within thirty days of the Order.

By Order No. 24884, issued August 6, 1991, this Commission established a \$2,500 monthly payment schedule for 1988 and 1989 regulatory assessment fees, including penalties and interest. Subsequently, the utility failed to pay the 1990 regulatory assessment fees, which continue to accrue penalties and interest. The amount of the delinquent fees, interest and penalties accrued through December 31, 1991, is \$26,550.54. After a diligent effort to collect the regulatory assessment fees with penalties and interest, by Order No. 25440, issued December 5, 1991, we found it appropriate to refer them to the Office of the Comptroller for further collection efforts. The Office of the Comptroller notified the Commission that it had, on January 17, 1992, assigned this matter to a collection agency.

1991 - 1993 REGULATORY ASSESSMENT FEES

The utility did not pay its outstanding 1991 regulatory assessment fees when they became due on March 31, 1992. However, the utility did file its 1991 regulatory assessment fees return indicating an outstanding regulatory assessment fee obligation of \$13,557.56. St. George did not indicate when it intended to pay these regulatory assessment fees. Until then, the utility had not complied with the Commission's ordered payment schedule. Therefore, to assure payment of its 1992 regulatory assessment fees, St. George was required by Order No. PSC-92-0478-FOF-WU, issued June 9, 1992, to establish an interest bearing escrow account for monthly deposits of 4.5 percent of its service billings.

Order No. PSC-92-0478-FOF-WU also required the utility to pay 1991 delinquent regulatory assessment fees by June 15, 1992. The utility paid \$15,997.92 on June 19, 1992, representing the 1991 delinquent regulatory assessment fees, penalties and interest. Along with its payment, the utility submitted a copy of its letter to the Comptroller's Office confirming that the utility will pay \$1,000 monthly towards past due regulatory assessment fees until the balance is paid in full.

As of May 28, 1992, the utility has made eleven monthly payments of \$1,000 to satisfy the balance owed that was referred to the Comptroller's Office. These payments satisfied both the 1988 and 1989 regulatory assessment fees balances, including \$2,383.60 toward the 1990 balance still outstanding.

To date, the utility has satisfied its regulatory assessment fees obligation for 1988, 1989, and 1991, but has not satisfied its regulatory assessment fees obligation for 1990, for which it remains delinquent in an amount of \$7,653.53.

The utility has complied with Order No. PSC-92-0478-FOF-WU by making monthly deposits into the escrow account to pay for its 1992 regulatory assessment fees. Though the 1992 regulatory assessment fees were due on March 31, 1993, it was not until April 22, 1993, that the utility submitted its regulatory assessment fees report indicating a \$15,809 amount due with a payment of \$12,100, leaving an escrow balance of \$58.61. The utility did not submit the additional \$3,709.18 regulatory assessment fees amount still due. The utility also did not indicate when it would pay the balance of its 1992 regulatory assessment fees nor did it offer any explanation as to why it had not already paid the balance due.

The utility was notified on June 25, 1993, that 1992 regulatory assessment fees of \$3,709.18 remained due and that the Commission had not received copies of the February 1993 through May 1993 deposit slips verifying that the deposits had been made. The utility has continued to submit monthly billing reports for verification of the monthly amount to be placed into escrow, but according to our records, we have not received the validated deposit slips that verify the deposits were made.

Following the filing of a recommendation by our staff that we order the utility to show cause why it should not be fined for its failure to fund the escrow account and for its failure to fully pay its 1992 regulatory assessment fees obligation, the utility deposited the \$6,707.34 required in the escrow account. Subsequently, on August 30, 1993, the utility submitted a check for \$3,709.18 to satisfy the remaining 1992 delinquent regulatory assessment fees amount. As a result of the utility's last minute compliance, the show cause recommendation was deferred.

The utility was notified on November 17, 1993, of its failure to file monthly revenue reports since August 1993, of its failure to make deposits into the escrow account since July 1993, and its failure to pay the penalty and interest balance of \$927.29. On November 23, 1993, the utility submitted the \$927.29 amount that was due along with the September and October 1993 revenue reports.

Though the utility indicated that the \$3,375 regulatory assessment fees amount for August and September 1993 would be paid by November 26, 1993, and that the \$1,885.11 regulatory assessment fees amount for October 1993 would be paid by November 30, 1993, none have been paid. The utility deposited the August 1993 regulatory assessment fee amount of \$1,717.35 on December 14, 1993. Up until our January 4, 1994, Agenda Conference, at which we voted to order St. George to show cause why it should not be fined for not properly funding the escrow account, the account had a deficient balance of \$4,098.77. However, on January 4, 1994, the utility made a deposit of \$556.01 for the November 1993 regulatory assessment fees, reducing the 1993 regulatory assessment fees escrow account deficiency to \$3,542.77. St. George remains delinquent for its September, October, and December 1993 regulatory assessment fees amounts required to have been put into escrow pursuant to Order No. PSC-92-0478-FOF-WU.

This utility has historically collected its regulatory assessment fees through its rates and has failed to pay them to the Commission as required by law. Regulatory assessment fees are intended to defray the costs incurred in this Commission's regulation of utilities.

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Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility is making a good faith effort toward payment. As a result, we find it appropriate to order the utility to show cause why it should not be fined for its failure to fund the escrow account as required by Order No. PSC-92-0478-FOF-WU.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that St. George Island Utility Company, Ltd., in Franklin County, shall show cause, in writing, within 20 days why it should not be fined pursuant to Sections 350.113(4) and 367.161, Florida Statutes. It is further

ORDERED that St. George Island Utility Company, Ltd.'s written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 14, 1994. It is further

ORDERED that St. George Island Utility Company, Ltd.'s response must contain specific allegations of fact and law. It is further

ORDERED that St. George Island Utility Company, Ltd.'s opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of this matter. It is further

ORDERED that a failure to respond to this show cause Order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that this docket shall remain open to monitor the funding of the escrow account and the disposition of this show cause proceeding.

By ORDER of the Florida Public Service Commission, this 25th day of January, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JBL

by: Kay Flynn

Chief, Bureau of Records

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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 14, 1994.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.