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ORIGINAL
FILE COPY

April 13, 1994

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. ~~93-101-09-WJ~~

Dear Ms. Bayo:

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' Response to St. George Island Utility Company Ltd.'s Objection to Citizens' Second and Third Set of Interrogatories and Second and Third Set of Requests for Production of Documents and Request for Discovery Conference.

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

- ACK
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- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAC Enclosures
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Sincerely,

Harold McLean
Associate Public Counsel

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Interim and) DOCKET NO. 940109-WU
Permanent Rate Increase in)
Franklin County, Florida by) Filed April 13, 1994
ST. GEORGE ISLAND UTILITY)
COMPANY, LTD.)

To: Prehearing Officer
Commissioner Julia L. Johnson

CITIZENS' RESPONSE TO ST. GEORGE ISLAND UTILITY COMPANY LTD.'S
OBJECTION TO CITIZENS' SECOND AND THIRD SET OF INTERROGATORIES
AND SECOND AND THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
-and-
REQUEST FOR DISCOVERY CONFERENCE

The Citizens of the State of Florida respond to objections¹ asserted in the Response to Citizens' Second and Third Set of Interrogatories and in Response to Citizens' Second and Third Request for Production of Documents to St. George Island Utility Company, Ltd. (SGU) as follows:

1. SGU's assertion² that the Citizens exceeded the limitation of 50 interrogatories in its First Set of Interrogatories is erroneous. The Citizens' First Set of

¹Although filed by the utility on March 31, 1994, these objections were not received by the Office of the Public Counsel until April 8, 1994.

² SGU first objects to the Citizens' Second and Third Set of Interrogatories because the number of interrogatories allegedly exceeded the Florida Public Service Commission's (FPSC) Order No. 94-0320-PCO-WU issued March 21, 1994, wherein the Commission limited the number of interrogatories to 50.

Interrogatories contained 44 interrogatories including enumerated subparts. Citizens' Second Set of Interrogatories contained 8 interrogatories including subparts. Thus, at a minimum, assuming the prehearing officer does not lift its extreme restriction on the number of interrogatories allowed in this proceeding, as requested on two occasions by the Citizens³, SGU should be required to respond to the first six interrogatories propounded in the Citizens Second Set of Interrogatories.

2. SGU's assertion⁴ that the Citizens exceeded the limitation of 75 requests for production of documents in its First Set of Requests for Production of Documents is erroneous. The Citizens' First Set of Interrogatories contained 60 requests for production of documents. The Citizens' Second Set of Requests for Production of Documents contained 14 requests for production of documents. The Citizens' Third Set of Requests for Production of Documents contained 27 requests for production of documents. Thus, at a minimum, assuming the prehearing officer does not lift its *sua sponte* and extreme restriction on the number of requests for production of documents allowed in this proceeding, SGU should be required to respond to the Citizens' entire Second Set of Requests for Production of Documents and the first document requested in the

³ See Citizens Motion to Permit Additional Interrogatories, filed February 11, 1994 and the Citizens Emergency Petition for Reconsideration of Order Establishing Procedure, filed April 7, 1994.

⁴ SGU objects to the Citizens' Second and Third Set of Production of Documents because the number of documents requested allegedly exceeded the Florida Public Service Commission's Order No. 94-0320-PCO-WU issued March 21, 1994, wherein the Commission limited the requests for production of documents to 75.

Citizens' Third Set of Requests for production of Documents.

3. The bare conclusory statement that the documents sought are "not relevant"⁵ is inadequate. The test for what is discoverable includes information reasonably calculated to lead to the discovery of admissible evidence. The additional conclusory statements regarding harassment are inadequate as well. Although substantive allegations are unavailable to SGU, the law requires more to support any objection by the recipient of discovery.

Bare allegations were found inadequate in First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Association, Inc. 545 So 2d 503 (Fla. 4th DCA, 1989) where the district court held:

Lastly, we turn our attention to petitioners' objections that some of the discovery sought was 'overly broad' or 'burdensome'. Such objections, standing alone would not constitute a basis for granting certiorari relief. (Citation omitted) More importantly, such words of art have little meaning without substantive support. Is this objection raised because petitioners would be required to produce a railroad boxcar full of documents, or are they merely objecting to the production of a half-inch thick file folder? Since the trial court has to consider petitioners' other objections, it is incumbent upon petitioners to quantify for the trial court the manner in which such discovery might be overly broad or burdensome. They must be able to show the volume of documents, or the number of man-hours required in their production, or some other quantitative factor that would make it so.

⁵ SGU questions the relevance or materiality of Interrogatories 34, 35, 36, 37, 39, 41, and 49 and Production of Documents 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 76, 77, 82, 99, 100, and 101.

Id. at 503

SGU has furnished the Commission the requisite words of art but has failed to furnish substance to their rash allegations of harassment, relevance, etc.

4. Moreover, the Citizens say that the documents sought are relevant and admissible at hearing (as well as reasonably calculated to lead to admissible evidence) for the following reasons:

- a. Interrogatory 34 requests information about the compensation, remuneration, salaries, wages, fees, benefits, earnings and income received by Mr. Brown (owner and manager of the utility). Interrogatory 35 requests the same information as interrogatory 34 for Ms. Sandra Chase (an employee of the utility). Mr. Brown is requesting compensation in this proceeding which amounts to approximately \$72,000. Mr. Brown alleges that he spends the majority of his time managing or providing legal advice to the utility. The Citizens believe that information concerning other forms of compensation will aid in assessing the validity of Mr. Brown's requested compensation and the time he devotes to the utility. SGU alleges that Ms. Chase spends approximately 33% of her time working for the utility. The remainder of her time is spent working for Mr. Brown's affiliated companies. The Citizens believe that information concerning other forms of compensation will aid in assessing the validity of Ms. Chase's requested

compensation and the time she devotes to the utility.

- b. Based upon the subsequent deposition of Mr. Brown, the Citizens agree to withdraw Interrogatory 36.
- c. Interrogatory 37 requests the ownership percentages for each individual partner of each partnership with which Mr. Brown is associated. Mr. Brown, his family, and or his affiliates are partners of several businesses which are associated with St. George Island Utility Company, Ltd. The requested information will show how much of the partnership is owned by Mr. Brown as well as the other partners. The Citizens believe this information is relevant to evaluating the relationship between Mr. Brown and his affiliates.
- d. Interrogatory 39 requests information about the management fee or other compensation drawn by Mr. Brown from St. George Island Utility Company, Ltd, for the years 1986, 1987, 1988, 1990, and 1991. The requested information is related to the issue of Mr. Brown's requested \$48,000 salary/management fee in the instant case and how this fee has changed overtime relative to the services provided.
- e. Interrogatory 41 requests information relating to the sale of water utility assets to St. George Island Utility Company, Ltd. in 1979. The requested information is directly related to the value of the assets included in rate base. The Commission, in the Company's last case noted that even though an original cost study was used to support the value of the

assets...."if at any time in the future, evidence is produced which reflects that our analysis of SGU's investment is incorrect, we may, of course, readdress the issue of SGU's level of investment." [Order 21122, p. 7.]

- f. Interrogatory 49 requests information about additions to plant the utility plans to make during 1994 and 1995. The requested information is relevant to the issue of quality of service and compliance with DEP requirements.
- g. Production of Document Request No. 61 requests the SGU partnership agreement. The requested document is relevant to the relationship between the utility, Mr. Brown and the partners of the utility. For example, the agreement should set forth how profits from the partnership are distributed.
- h. Production of Document Request Nos. 62, 63, 64, 65, 66, 67, 68, and 69 request the income tax returns of each of Mr. Brown's known affiliates. These tax returns were requested for purposes of determining the business activities of these affiliates with the utility. Most, if not all, companies are located at the same address as the administrative office of SGU. Mr. Brown is typically an officer or director of each of the companies for which information is requested. The Citizens requested the tax returns to evaluate the transactions between the utility and these affiliates and to evaluate these affiliates' business activities as they relate to the utility. The tax returns are also solicited for purposes of

determining if Mr. Brown is receiving compensation from any of these companies above and beyond that claimed in the utility's rate filing. The Citizens would note that it is the Citizens understanding and belief that the tax returns and financial records of many, if not all, of these companies have been provided to the Staff of the Public Service Commission for review.

- i. Production of Document Request No. 70 requested the income tax returns of Mr. Brown. Mr. Brown is requesting compensation in this proceeding which amounts to approximately \$72,000. Mr. Brown alleges that he spends the majority of his time managing or providing legal advice to the utility. The Citizens believe that information concerning other forms of compensation which will be reported on Mr. Brown's income tax returns will aide in assessing the validity of Mr. Brown's requested compensation. Other information may also be gleaned from Mr. Browns income tax returns. For example, any possible double deductions would be noted--Mr. Brown taking deduction on his personal tax returns and then asking recovery for such expenses in the rate case.
- j. Production of Document Request Nos. 71 and 72 request documents concerning the 1979 IRS audit of St. George Island Utility Company, Ltd. and the value of assets claimed by the utility and the IRS. The requested documents are directly related to the value of the assets included in rate base. See discussion above with respect to Interrogatory 41.

- k. Production of Document Request No. 74 requests the financial statements of the utility from 1979 to the present. These documents are relevant to the value of assets included in the utility's rate base as well the issue of affiliate transactions.
- l. Production of Document Request Nos. 76 and 77 request documents substantiating the price paid and ownership of all land included in rate base. Clearly, the documents sought are relevant to the issue of the value and ownership of the land included in the utility's rate base.
- m. Production of Document Request No. 82 requests a copy of all legal bills⁶ rendered by Mr. Brown to his clients for the years 1992, 1993 and 1994. In the instant docket Mr. Brown is requesting that the utility compensate him for \$24,000 of legal services and approximately \$48,000 for management services. One of the issues in the proceeding will be the reasonableness of this salary request as well as how much time Mr. Brown spending managing and providing legal services to the utility. Mr. Brown owns a law office out of which he provides legal services to other clients. The Citizens believe that the documents may provide information concerning how much time Mr. Brown spends engaged in activities other than utility business. This speaks directly to issue of the

⁶ The Citizens indicated in their request to the utility that the name of the client and the services rendered could be redacted from the requested legal bills.

compensation requested in this proceeding as well as how much time Mr. Brown spends managing and providing legal services to the utility.

n. Production of Document Request No. 99 requests copies of invoices for the preparation of income tax returns and financial statements of Mr. Brown's affiliates. Mr. Brown, through the utility, pays persons to prepare the income tax returns and financial statements of the utility. These documents are requested for purposes of ascertaining whether or not the utility and its customers are paying for the tax and financial statement preparation of Mr. Brown's affiliates.

o. Production of Document Request Nos. 100 and 101 request financial information for Leisure Properties, the general partner of St. George Island Utility Company. Leisure Properties originally owned the water utility assets and sold them to St. George Island Utility Company in 1979. Leisure Properties was the developer of part of St. George Island. The information requested is sought for purposes of determining whether or not the cost of utility assets were paid for by property owners at the time the lots were sold. This information is directly related to the value of the utility assets included in rate base.

5. SGU objects to interrogatories 45, 46, and 48 on the basis that they are substantially the same as interrogatories 23, 25 and 26. All interrogatories requested lot information from the utility. In response to interrogatories 23, 25 and 26 the utility provided the number of customers added to the system

for the year in question. Interrogatories 45, 46, and 48 request similar information, but as of the end of the year in question. For example, there are 1000 customers (lots) that receive water service from the utility in 1992 as opposed to there were 100 customers (lots) that were added to the system in 1992. The utility provided the latter information in response to interrogatories 23, 25, and 26, the former information was requested in interrogatories 45, 46, and 48.

6. SGU's continuing reluctance to comply with lawful discovery requests has seriously compromised the Citizens point of entry into the administrative process. Liberal discovery is afforded by the Commission in accordance with Rule 25-22.034, Florida Administrative Code, which provides:

Discovery--Parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders *to effectuate the purposes of discovery* and to prevent delay and may impose appropriate sanctions under Rule 1.380, Florida Rules of Civil Procedure, except that such sanctions may not include contempt or the award of expenses unless specifically authorized by statute. Sanctions may also include dismissal under Rule 25-22.042. (italics provided)

Contrary to the purposes of Rule 25-22.034, Florida Administrative Code, SGU has missed no opportunity⁷ to frustrate the intent of Discovery, providing only that

⁷ No opportunity, with the exception of the Citizens' requests for admission which were inexplicably answered fully, fairly, and promptly.

information which the Citizens have been willing to extract by actual visit to utility property. The utility's recalcitrance has irreparably prejudiced participation by the Office of Public Counsel, and has tainted the integrity of this entire proceeding.

7. The instant motion is the seventh pleading addressing discovery filed by the Citizens in this relatively young case. This continuing motion practice is costly to the Citizens, Staff, Utility, and the prehearing officer. The Citizens believe that a conference--including the actual presence of the prehearing officer--addressing discovery and its attending obligations to the parties is essential to the due process rights of the Citizens, and to the other parties as well.

WHEREFORE, the Citizens urge the Commission to deny SGU's objections to the Citizens interrogatories and document requests and order SGU to immediately respond to the Citizens interrogatories and to immediately produce the documents requested by the Citizens; and the Citizens request a conference addressing discovery at the prehearing officer's earliest opportunity.

Respectfully submitted,



Harold McLean
Associate Public Counsel

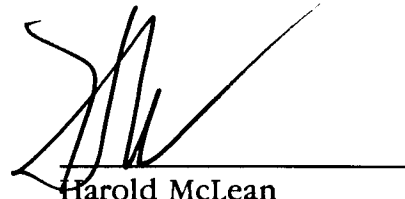
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111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
Attorney for the Citizens
of the State of Florida

**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 13th day of April, 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 read 'Harold McLean', is written over a horizontal line.

Harold McLean
Associate Public Counsel