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**ORIGINAL
FILE COPY**

June 13, 1994

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0863

RE: Docket No. ~~09109-VII~~

Dear Ms. Bayo:

Enclosed please find the original and (15) fifteen copies of Citizens' Objection to Certain Discovery for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

- ACK _____
- AFA _____
- APP _____
- CFE _____
- CFP _____
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- CRK _____
- CRS _____
- CRW _____
- CRX _____
- CRZ _____

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Sincerely,

[Signature]
Harold McLean
Associate Public Counsel

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Enclosures

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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: June 12, 1994

CITIZENS' OBJECTION TO CERTAIN DISCOVERY

SUMMARY

The Citizens object to SGU interrogatories 11 through 28, including all subparts. Each of the subject interrogatories served upon the Citizens by SGU is unduly burdensome and oppressive because each would require the Citizens to gather data, not currently in the possession of the Citizens, to which SGU has equal or better access. Neither the Rules of Civil Procedure nor any other aspect of Florida law compel the Citizens to perform investigations or to gather evidence for SGU.

ARGUMENT

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel (Citizens) pursuant to the provisions of the Order Establishing Procedure, object to certain discovery propounded by St. George Island Utility Company, Ltd. (SGU) on June 2, 1994, and as grounds therefore say:

- 1. Interrogatories 11 through 28, each of which includes identical subparts, seek information about a number of utilities under the jurisdiction of the Florida

Public Service Commission (Commission). The subject interrogatories differ each from the others only in the name of the subject utility such that the following information is sought for each named utility:

- a. The Public Service Commission docket number relating to the most recent rate case involving the utility.
- b. The number of customers served by the utility and the average daily volume of water distributed by the utility.
- c. The length of the utility's core transmission, line and the length of the utility's distribution system.
- d. Whether the utility is protected from competition from private wells or other alternative water supply sources.
- e. Whether there is a proliferation of shallow drinking water well systems in the area served by the utility that have the potential to contaminate the utility's water system.

2. This information is apparently sought by SGU in order to test the Citizens' direct testimony suggesting that various SGU expenses are alarmingly disproportionate to similar expenses of other class B utilities regulated by this Commission¹.

3. The acquisition of this information would require a ministerial search of Commission records to which the Citizens have no special access and to which SGU has ready access. Because Commission records would probably not reflect any of the data requested in subsection (d) or (e) of the interrogatories, an investigation of the records of the subject utilities, and interviews of utility personnel would also be

¹ Testimony of Kimberly H. Dismukes, filed May 25, 1994, pp. 5-8

required. In addition, some measure of independent expertise to evaluate several notions (e.g. *competition*², *proliferation*, *shallow*, and *potential to contaminate*) would be required and presumably compensated.

4. The Citizens have neither unique position nor special expertise such that their opportunity to gather this evidence is in any way superior to that of SGU. All of the information which is available to the Citizens upon investigation is equally available to SGU, if not more so.

5. SGU is seeking to compel the Citizens to gather evidence on SGU's behalf. While the Citizens endorse and occasionally insist upon liberal discovery, neither the Florida Rules of Civil Procedure nor Florida case law support any requirement that the Citizens pore over Commission and utility records on behalf of SGU. As the Third District Court held in Cabrera v. Evans, 322 So. 2d 559, 560 (Fla. 3d DCA 1975), ". . . a litigant may not use interrogatories to compel his adversary to investigate his case for him." The court found the interrogatories in question "so burdensome as to be oppressive, and as such, ought not be a requirement for the plaintiff's progress of her case." (Cabrera at 560). Also see Travelers Indemnity Company v. Salido, 354 So. 2d 963 (Fla. 3d DCA 1978) (orders enforcing discovery found unduly burdensome and oppressive and thus quashed) Finally, see F. R. Civ. P. 1.280(c) which provides authority for protective orders upon a showing of oppression or undue burden.

6. The subject discovery, namely interrogatories 11 through 28, including

² A notion whose definition has occasioned countless hours of Commission hearings.

each subpart, constitute an undue and oppressive burden upon the Citizens to which the Citizens object.

WHEREFORE, the Citizens of the State of Florida, object to the subject interrogatories, and respectfully decline to answer same, absent further order of the Commission.

Respectfully submitted,



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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 telecopy, or both, to the following parties on this 12th day of June, 1994.

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