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ORIGINAL  
FILE COPY

July 5, 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. [REDACTED] WU

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' Prehearing Statement.

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

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Sincerely,

Harold McLean  
Associate Public Counsel

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DOCUMENT NUMBER-DATE  
06578 JUL-5 94  
EPSC-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. )

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DOCKET NO. 940109-WU

Filed: July 5, 1994

PREHEARING STATEMENT OF THE  
CITIZENS OF THE STATE OF FLORIDA

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Associat Public Counsel

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Attorney for the Citizens  
of the State of Florida

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Attorney for the Citizens  
of the State of Florida

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: July 5, 1994  
ST. GEORGE ISLAND UTILITY )  
COMPANY, LTD. )  
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PREHEARING STATEMENT OF THE  
CITIZENS OF THE STATE OF FLORIDA

The Citizens of the State of Florida (Citizens) by and through JACK SHREVE,  
Public Counsel, pursuant to Rule 25-22.038(3), Florida Administrative Code and to Order  
PSC-94-0320-PCO-WU, Order Establishing Procedure, file their Prehearing Statement:

All Known Witnesses:

1. Kimberly H. Dismukes. Ms. Dismukes will address regulatory accounting,  
policy, and ratemaking issues.

Prefiled Exhibits:

2. Included with the prefiled testimony filed by Ms. Dismukes on May 25, 1994,  
is Appendix I addressing her qualifications as an expert witness and 27 exhibits,  
designated \_(KHD-1 through 27) which support her testimony.

Statement of Basic Position:

3. For a variety of reasons set forth in the testimony of the Citizens, the rates  
proposed by St. George Island Utility Company, Ltd. (SGU) are excessive. The case

presented by SGU fails to sustain the company's burden of proof in that it fails to show that the rates currently charged are unreasonable.

SGU's application reflects numerous pro forma adjustment representing expenses which were identified in contemplation of this rate application and are of doubtful validity. The necessity for these adjustments is seriously impeached by their omission from the immediately preceding, dismissed rate case and by comparison with the expenses incurred by other Class B utilities regulated by this Commission.

SGU has the ultimate burden of persuasion in this application. Yet it brings to this proceeding estimates and guesses in lieu of records which SGU should have maintained. Whether the issue is the original cost of the plant, or employees' travel allowances, the Commission should resolve doubt against the party who could have prevented it. It is the utility's burden to bring substantial, competent evidence to the Commission. To the contrary, SGU's case is founded upon unsubstantiated estimates.

## ISSUES AND POSITIONS

### QUALITY OF SERVICE

Issue 1. Is the quality of service provided by the utility satisfactory?

OPC: The customers of this utility are uniquely situated to know the quality of water service provided by this utility. The Citizens will rely upon the live testimony of the customers in order to form a position on this issue.

### RATE BASE

Issue 2. Has SGU accurately stated the original cost of the water system?

OPC: No. Because SGU for whatever reason either cannot or will not present the Commission with original documentation as to original cost, the Commission must look to other evidence to indicate, as best it can, the original cost of the water system. Although the Commission in the last rate case relied on an original cost study commissioned by the SGU for purposes of a rate case, there is much earlier documentation available to the Commission of greater reliability than SGU's original cost study. Where SGU's failure to maintain proper records introduce ambiguity into the regulatory process, the Commission should construe the ambiguity against SGU. This is particularly true where, as here, SGU has the ultimate burden of proof to show that its current rates are unreasonable. In the last rate case, the Commission enunciated its reservation as to the original cost study for good reason. The Commission offered to address the issue again if evidence were produced suggesting that its analysis was incorrect. That evidence having been here produced, rate base should be reduced by \$645,038

Issue 3. Does a reduction of plant in service related to original cost necessitate a reduction to accumulated depreciation?

OPC: Yes. The reduction in plant in service by \$795,557 necessitates an increase to accumulated depreciation by \$150,518 for a net reduction in net plant and rate base of \$645,038.

Issue 4. Is an adjustment necessary to reflect the use of office furniture and equipment by affiliates of SGU?

OPC: Yes. As is more thoroughly discussed under net operating income, 10% of a number of expenses should be allocated to affiliates of SGU. Similarly, 10% of the investment in certain office equipment should be allocated to non-utility affiliates as well, resulting in a reduction of \$1,026 to general plant.

Issue 5. Does a reduction of plant in service due to the affiliates' use of office equipment and furniture necessitate an adjustment to accumulated depreciation?

OPC: Yes. Accumulated depreciation should be increased by \$80.

Issue 6. Does SGU's case in chief present an appropriate matching of rate base on the one hand with revenues and expenses on the other?

OPC: No. As is more thoroughly discussed under net operating income, SGU's filing includes many adjustments to the test year (1992) reflecting expenses of 1993. In an issue under NOI, the Citizens recommend adjustments which reflect additional changes in 1993 in both revenue and expenses. If the Commission accepts SGU and the Citizens' adjustments to expenses and revenue, then it should adjust the rate base to 1993 level as well. 1993 included additions to rate base due to increased number of customers. However, additional contributions in aid of construction were also received in 1993 such that a negative adjustment to rate base of \$190,062 is appropriate. The reduction to depreciation expense occasioned by a negative \$190,062 adjustment to rate base is recommended in an NOI issue.

Issue 7. If the Commission does not accept adjustments to the test year based upon 1993 expenses, revenue, and investment, are adjustments to the 1992 test year rate base nevertheless appropriate?

OPC: Yes. \$10,875 representing sheet metal for a water storage tank should be removed from the 1992 test year rate base. Moreover, accumulated depreciation should be calculated according to Commission rule 25-30.140, appropriate to a class B utility. \$65,000 CIAC from St George Island Homeowners Association should be removed from rate base. Finally, \$44,400 received in 1991, but not booked until 1993 should be removed from the 1992 test year rate base.

Issue 8. Is an adjustment to working capital necessary?

OPC: Yes. Working capital should be reduced by \$29,805 due to reductions in O&M.

#### NET OPERATING INCOME

Issue 9. Should the numerous pro forma adjustments to the test year included in this case be contrasted with those requested in the immediately prior, dismissed rate case?

OPC: Yes. That a number of pro forma adjustments arose over the space of only a few months goes directly to the credibility of the adjustments themselves. Where the adjustments vary from one case to the next the Commission cannot conclude that the company observed the same standard of candor

and accuracy in both cases. The Commission is free to conclude that the pro forma adjustments of the later filing flow not from known and ascertainable changes, but from an attempt to capture expenses which are either unnecessary or unlikely or both.

Issue 10. Are the expenses claimed by SGU comparable to those experienced by other Class B water utilities under Commission jurisdiction.

OPC: No. SGU's expenses are alarmingly higher than those of other Class B water utilities under Commission jurisdiction. O&M expenses of SGU, stated on a per ERC basis are more than twice as high as Jasmine Lakes Corporation; almost three times higher than Mad Hatter Utility, Inc., both of which were recently reviewed for reasonableness. While there may be some dissimilarity between SGU and these utilities, there is no dissimilarity which would explain the disparity of O&M expenses in this order of magnitude. SGU's expenses are uniformly higher than other Class B utilities. SGU's filing is silent as to why its O&M expenses should substantially surpass all other Class B utilities. The Commission should view SGU's O&M expenses with heightened scrutiny where its expenses are well beyond those experienced by other Class B utilities.

Issue 11. Should test year depreciation expense be adjusted to reflect the effect of the reduction of plant in service related to original cost?

OPC: Yes. The of reduction in plant in service related to original cost necessitates a reduction in test year depreciation expense by \$21,480.

Issue 12. Should test year depreciation expense be adjusted to reflect the effect of the reduction of plant in service related to affiliate use of office equipment?

OPC: Yes. The of reduction in plant in service related to affiliate use of office equipment necessitates a reduction in test year depreciation expense by \$68.

Issue 13. Should test year expenses be adjusted to reflect an additional allocation of expenses to affiliates of the utility.

OPC: Yes. At least eight affiliates operate from the same address and the same offices as the utility. Despite the inherent difficulty in the allocation of expenses, the utility is virtually devoid of time records, fax logs, copy logs,



written rent agreements, or any other rational basis upon which to base any allocation. Because of the lack of records, the Commission (and intervenors) are left to infer from what evidence they can find the extent to which utility resources are shared with the affiliates. While SGU invites the Commission to assume that resources are dedicated exclusively to utility purposes, the Citizens believe the better practice is to resolve doubt against the party who brings doubt to the process. There is no justification for the lack of time records, phone records, and written arrangements between the utility and its affiliates generally, and Mr. Brown specifically.

The Citizens recommend that an allocation of 10% of most common costs to Mr. Brown's affiliated companies is appropriate with two exceptions: Ms. Chase's (the office manager for Mr. Brown's law practice and the utility and other affiliates) should be allocated 25% to non-utility affiliates and 50% of the office rent should be allocated to non-utility affiliates.

In all, \$10,355 in expenses should be allocated to non-utility affiliates. In addition to \$332 which represents the appropriate share of payroll taxes based upon allocated salaries.

Issue 14. Does SGU's case in chief present an appropriate matching of revenues and expenses?

OPC: No. SGU's case is based upon a 1992 test year; yet the Commission is urged by SGU to consider a number of 1993 (and in some cases, 1994) expenses as pro forma adjustments to the test year. While the test year ought to be adjusted for known and ascertainable change in expenses as SGU urges, it ought to be adjusted for known and ascertainable change in revenue and investment as well. The Citizens recommend adjustments to test year revenue and expenses as follows:

- a. \$35,094 increase to revenue to recognize 1993 revenue;
- b. \$3,365 increase to expenses to recognize 1993 expenses not already recognized in SGU's filing.

[A test year adjustment to recognize change in investment is reflected in the section dealing with rate base]

Issue 15. If the Commission adopts the Citizens' recommendations with respect to 1993 investment, is an adjustment to depreciation expense required?

OPC: Yes. A reduction in ratebase as recommended by the Citizens results in a necessary \$9,801 negative adjustment to the depreciation expense based upon investment.

Issue 16. Is an adjustment to salaries and wages appropriate?

OPC: Yes. In December of 1993, employees of SGU received an average wage increase of 26%. These raises were granted to the utility employees as this rate case was being prepared. The Citizens believe that the raises were driven not by economic conditions in the employment market and note that the Commission has voted in two recent water and wastewater cases to limit the level of pay increases to less than 5%. SGU's application also includes an adjustment for a full time employee (a second field assistant) who was hired long after the test year and who has worked only part time during 1994. The Citizens recommend that this employee be included as part time such that these two adjustments taken together result in an adjustment to wages and salaries of \$23,906.

Issue 17. Are adjustments to Mr. Brown's total compensation appropriate?

OPC: Yes. SGU's application includes \$85,700 compensation to Mr. Brown. This sum represents several utility sources:

- ◀ his \$48,000/yr management fee paid by SGU to Armada Bay Company and occasionally directly to Mr. Brown;
- ◀ his \$24,000/yr legal fee retainer pursuant to an agreement between SGU and Gene Brown, PA;
- ◀ his \$5000/yr legal fee for pursuing this rate case on behalf of the SGU;
- ◀ his \$3,600/yr health benefits; and,
- ◀ his \$3,900 transportation allowance.
- ◀ his \$1,200 cellular telephone allowance

Mr. Brown serves several functions on behalf of the utility, but the evidence will show that the functions are inextricably co-mingled with each other. Because time records for the test year are non-existent, because all time records extant at this time are recently compiled in contemplation of this rate case, and because no records of alleged utility related travel are

maintained, it is not possible to tell what efforts are expended by Mr. Brown on utility business and which of those efforts are related to legal or non legal functions.

Despite Mr. Brown's being in the best position to maintain and furnish to the Commission contemporaneous accounts of his time and expenses, he has, until quite recently, declined to do so. So failing, SGU, through Mr. Brown now invites the Commission to rely upon his recollection.

Moreover, it will be seen that SGU is an unusually litigious utility, always ensnared in disputes with regulatory agencies, not the least of which is this Commission. This Commission has never compelled customers to pay for utility management's recalcitrance, procrastination, and violation of law. Intermingled in SGU's litigation are the services of several outside law firms, the nature and necessity of their services unclear.

Mr. Brown's dual role as utility manager (through Armada Bay Company) and legal advisor add complexity to any rational analysis of the necessity for his services and at any given time, in what capacity he is acting. Vastly complicating this situation is the total lack of contemporaneous record of these matters. It is literally impossible to determine whether at a given time Mr. Brown was pursuing valid utility purposes or defending the utility for failing to observe lawful government regulation.

The Citizens recommend that SGU be afforded management salary commensurate with that enjoyed by management of similarly sized utilities; and that it be afforded legal fees commensurate with those incurred by similarly sized utilities.

Because these items are interdependent, the Citizens rely upon their direct testimony and attending schedules to establish each specific adjustment.

Issue 18. Is an adjustment to Contractual Services - legal necessary?

OPC: Yes. As previously discussed, SGU does not favor the Commission with time records to which the Commission could look to justify the unusually high legal expenses of \$24,000. The Citizens recommend the Commission look to other Class B utilities for a measure of reasonableness. Such a comparison yields an average of \$3 per customer per year, which would yield a legal expense of \$3,141 per year for SGU. Consequently, an adjustment of \$21,000 is appropriate.

Issue 19. Is an adjustment to pensions and benefits necessary?

OPC: Yes. Health benefits (\$300 cash per month) are requested by SGU for all employees of the utility and for Mr. Brown. Mr. Brown is not an employee of the utility--he is the employee of Armada Bay Company to which the utility pays \$48,000/yr for management services. Because it is unusual for a utility of this size to pay health benefits to hourly and part-time employees, the utility should incur health benefits only for its four full time, salaried employees. For Ms. Chase, however, because her time is allocated 25% to non-utility affiliates, her health benefits should be similarly allocated.

A pension benefit for all employees is also sought. The pension was established, if at all, effective in January of 1994. This plan is suspect for several reasons detailed in the Citizens' testimony. In sum, it appears to have been fashioned in contemplation of this rate application, it includes no requirement that SGU continue whatever program there is, (it is in fact contingent on specific approval in this application) and finally, if it were seriously undertaken, it might have been explained to employees such that they could remember its substance.

\$16,956 of this pro forma adjustment to test year should be rejected.

Issue 20. Is an adjustment to contractual services - accounting, necessary?

OPC: Yes. SGU has included in its application a \$6,000/yr retainer for tax accountant Barbara Withers. She is, according to SGU, to be consulted for tax advice and complicated or more sophisticated accounting matters. Ms. Withers was allegedly retained by SGU in January of 1993, however the retainer was prepared in February of 1994. Despite Ms. Withers association with Mr. Brown's interest since the 1970's, her services were not required or used by SGU during 1992 (the test year) or 1993. The need for Ms. Withers' services is dubious at best: it lacks the certainty required by the Commission to support pro forma adjustments.

This \$6,000 pro forma adjustment to test year should be rejected.

Issue 21. Is an adjustment to contractual services - other, necessary?

OPC: Yes. As detailed in the Citizens' testimony, the majority of these expenses have never been incurred. Moreover, a significant portion of the proposed expenses are occasioned by neglect of utility assets which now need more than maintenance--they need rehabilitation. Neglect leading to rehabilitation

brings about costs which are not prudently incurred in the provision of service and ought not be borne by customers.

The Citizens' testimony shows several other matters of concern. This \$70,011 pro forma adjustment to test year for contractual services - other should be rejected.

To the extent that any of these proposed expenses are included in the rates customers will pay, the Citizens recommend that each be placed in escrow, that an escrow agent beyond the control of SGU be appointed, and that the condition of escrow be verified by a designated commission staff employee acceptable to the Citizens.

Issue 22. Is an adjustment to insurance expense necessary?

OPC: Yes. SGU is seeking a pro forma adjustment of \$36,502 for general liability, workman's compensation, and property insurance. The adjustment arises from SGU's having obtained one bid from one agent. The utility has apparently never had most of this coverage in the past, and certainly did not have it in the test year or since. The necessity for insurance is questionable where the utility is judgment proof. The entire \$36,502 pro forma adjustment to test year should be rejected.

Issue 23. Is an adjustment to transportation expense necessary?

OPC: SGU owns no vehicles, thus the pro forma transportation represents cash paid to employees and to Mr. Brown. Neither Mr. Brown nor any of the employees who receive a travel allowance are required to document what travel takes places on behalf of their employer. No travel records are maintained either by the employees or by the utility.

Because SGU maintains no records, the Commission (and intervenors) are once again invited to rely on far less certain supposition, recollection, and the like for evidence.

Were the Commission to utilize the same standards it applies to its own employees where they seek reimbursement for use of their private vehicles, the entire proforma adjustment of \$15,600 would be rejected. However, it is reasonable to assume that the employees stationed on the island (Mr. Garrett and Mr. Shiver) must travel in association with their work. While assumption is a very poor substitute for evidence, the Citizens recommend that half of their requested travel allowance be added to the test year. This would permit the utility to recover for 20,000 miles travel per year at 20

cents per mile.

Consequently, \$11,700 of the pro forma adjustment to test year for transportation expenses should be rejected.

Issue 24. Is an adjustment to bad debt expense necessary?

OPC: Yes. The support for this expense was confusing. No one at the utility was able to explain the document. The document does nothing to support the requested \$6,276. As with other adjustments, it is reasonable to look to other Class B utilities. Such a comparison yields an average approximately one-fourth of the amount requested.

Thus \$4,707 of the pro forma adjustment to test year for bad debt expense should be rejected.

Issue 25. Is an adjustment to miscellaneous expense necessary?

OPC: Yes. Included in this issue are four items: Mr. Brown's cell phone; corporate filing fees of a non-utility affiliate, which is a corporate partner of the general partnership which is the utility; certain items from the staff audit which are non recurring or non utility; and fourth, non utility and non-recurring telephone charges.

\$6,831 of the pro forma adjustment to test year for miscellaneous expense should be rejected.

Issue 26. Are adjustments to deferred expenses necessary?

OPC: Yes. Five adjustments are necessary.

System analysis

This item relates to a revised system analysis allegedly required by the DEP. However, DEP correspondence to SGU indicates that what they want is an update. SGU has sought no bid for the update and in the absence of a bid, assumes that the update will cost as much as the original. In short, there is no basis for the utility assumption that the update will recur every two years. Citizens recommend that this expense be amortized over 5 years. Accordingly, this pro forma adjustment to test year expenses should be reduced by \$9,511.

Aerator analysis

The original aerator analysis was apparently deficient. Ratepayers should not

be required to pay for the cost to correct these deficiencies. In addition, the company has provided no support for a 2 year amortization period. Accordingly, this pro forma adjustment to test year expense should be reduced by \$3,234.

Hydrological study

The utility estimated the cost of this study as it must where it has not obtained any bid from any engineering firm. The study is allegedly required by the water management district as a prerequisite to an enlargement of SGU's consumptive use permit. It is interesting to note that SGU once had a CUP which authorized greater use than that now sought. Since the need for the study is questionable, since it might have been avoided, and there is no documentation for the cost of the study, all of this \$9,000 pro forma adjustment to test year expenses should be rejected.

Fire protection study

The \$6,000 cost for the fire protection study is a estimate devoid of any substantiation. None of it should be added to the test year.

Issue 27. Does SGU's current level of unaccounted for water necessitate any adjustments?

OPC: Yes. During the test year the utility experienced 15.27% unaccounted for water. SGU now only experiences 2% unaccounted for water, but the chemicals and purchased power associated with the difference between 2% and 15.27 % improperly remain in the test year. In addition, the company had three overflows which caused the loss of 435,000 gallons, in addition to losses by way of unaccounted for water. Likewise, the chemical and purchased power associated with this 435,000 gallons should not go in the test year since the cause of the loss is now corrected. These items necessitate an adjustment to chemical expenses of \$538 and to purchased power by \$2,888.

Issue 28. Are adjustments to rate case expense necessary?

OPC: Yes. Adjustments in several categories are necessary:

Citizens Direct Testimony

The detail to an adjustment to amortized rate case expenses of \$13,950 is included in the Citizens' direct testimony.

The Dr. Ben Johnson Deposition

The deposition of Dr. Johnson was unnecessary, and irrelevant to this rate proceeding. The rare questions which touched upon this proceeding could have been answered more accurately by Kim Dismukes who will be a witness in the proceeding. The "deposition" was an expensive argument between Mr. Brown and Dr. Johnson concerning their historical and continuing feud regarding Dr. Johnson's attempts to obtain service from SGU.

None of the costs of the deposition are as yet known to the Citizens so the precise adjustment to rate case expense is unknown at this time.

#### Discovery compliance

A significant portion of SGU rate case expense was incurred because of SGU's disregard--if not contempt--for the provisions of discovery employed by the Florida Rules of Civil Procedure and the rules of this Commission. Compliance with, rather than steadfast resistance to, reasonable discovery is the reasonable and prudent course to take for any regulated utility. Had utility management reasonably and prudently complied with discovery provisions, much less rate case would have been incurred. Rate case expense occasioned by SGU's resistance to discovery should be rejected as unreasonably incurred.

#### Duplicative Legal Services

In the person of Gene Brown and Stephen Pfeiffer, SGU has obtained the services of two seasoned members of the Florida Bar. The services of either one would have been adequate, particularly as to attendance at depositions.

Issue 29. Should test year expenses be adjusted to eliminate the cost of maintaining the old generator?

OPC: Yes. The Company's filing includes a new generator in rate base. The repair cost for the old generator is non-recurring. Moreover, it is questionable as to whether the expense of maintaining the old generator was prudent given the eminent purchase of a new generator. \$2,665 should be removed from test year.

Issue 30. Is an adjustment to taxes other than income taxes necessary?

OPC: Taxes other than income taxes should be increased by \$403.



## COST OF CAPITAL

Issue 31. What is the appropriate overall cost of capital?

OPC: The appropriate overall cost of capital is 8.07%

Issue 32. Are adjustments to SGU's capital structure necessary.

OPC: Yes. Two adjustments are appropriate.

### The advertising judgment

A judgment owned by Ms. Melton, Mr. Brown's late mother, of Leisure Properties, Inc. to an advertising agency, was exchanged by the utility for an alleged debt of the utility to Ms. Melton. The Utility's debt to Leisure is unsupported by any note or other evidence of indebtedness and it is unclear how the activities of Leisure Properties with its ad agency affects utility business. The debt with an unpaid balance of \$85,865 should be removed from the utility's capital structure.

### Short term debt

SGU has retired several components of short term debt since the test year. Only that short term debt in existence should be reflected in the test year

The effect of these adjustments is shown in schedule 25 of the Citizens testimony.

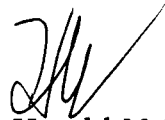
STIPULATIONS:

The Citizens have entered into no stipulations.

PENDING MATTERS

The Citizens know of no unresolved motions.

Respectfully submitted,



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Associate Public Counsel

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Attorney for the Citizens  
of the State of Florida

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

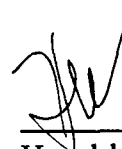
I HEREBY CERTIFY that a correct copy of the foregoing has been furnished  
by U.S. Mail or hand-delivery to the following parties on this 5th day of July, 1994.

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