

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
Petition for Interim and : DOCKET NO. 940109-WU
Permanent Rate Increase in :
Franklin County By St. George :
Island Utility Company, Ltd. :

PROCEEDINGS: PREHEARING CONFERENCE

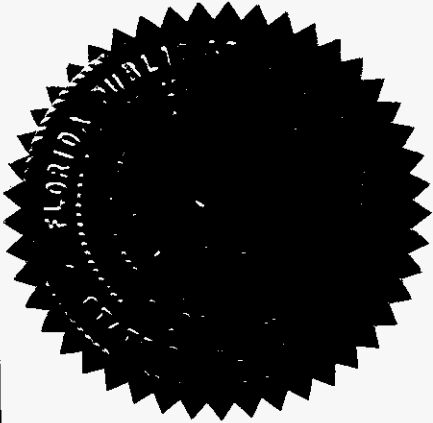
BEFORE: CHAIRMAN J. TERRY DEASON
Prehearing Officer

DATE: Tuesday, July 12, 1994

TIME: Commenced at 9:30 a.m.
Concluded at 11:10 a.m.

PLACE: FPSC Hearing Room 106
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter



1 APPEARANCES:

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12 **Sewer District.**

13 **HAROLD McLEAN**, Office of the Public Counsel,
14 c/o The Florida Legislature, 111 West Madison Street,
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16 No. (904) 488-9330, appearing on behalf of the **Citizens**
17 **of the State of Florida.**

18 **ROBERT J. PIERSON**, Florida Public Service
19 Commission, 101 East Gaines Street, Tallahassee, Florida
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21 **Commission Staff.**

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1 **MARY ANNE HELTON, Florida Public Service**
2 **Commission, 101 East Gaines Street, Tallahassee, Florida**
3 **32399-0862, Counsel to the Commissioners.**

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5 **ALSO PRESENT:**

6 **MARSHALL WILLIS, FPSC Division of Water and**
7 **Wastewater.**

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P R O C E E D I N G S

(Hearing convened at 9:30 a.m.)

CHAIRMAN DEASON: Call the prehearing conference to order. Read the notice, please.

MR. PIERSON: Pursuant to notice, this time and place has been set for a prehearing conference in Docket No. 940109, the application of St. George Island Utility Company, Ltd. for increased rates.

CHAIRMAN DEASON: Thank you. Appearances.

MR. PFEIFFER: I'm Steve Pfeiffer of the firm of Apgar, Pelham, Pfeiffer and Theriaque, representing the utility of St. George Island Utility Company, Ltd.

MR. McLEAN: Commissioner, I'm Harold McLean, of the Office of Public Counsel. And our address is correctly reflected in the prehearing order.

MR. PIERSON: Robert Pierson and Marc Nash, 101 East Gaines Street, Tallahassee, Florida, on behalf of the Commission Staff.

MS. HELTON: Mary Anne Helton, advisor to the Commission. Same address as the Commission Staff.

MR. McLEAN: Commissioner, Barbara Sanders, an attorney from Apalachicola, has been participating in many of the stages of this proceeding and I'm advised was going. To attend this morning. She may be running late, I'm not sure.

1 CHAIRMAN DEASON: Very well.

2 MR. McLEAN: Her name and address is correctly
3 reflected in the prehearing order.

4 CHAIRMAN DEASON: Mr. Pierson, do you have a
5 recommended order or sequence we need to follow this
6 morning?

7 MR. PIERSON: Not necessarily, Mr. Chairman.
8 Being mindful of your need to get out of town, perhaps we
9 should just go through the prehearing order first and deal
10 with the motions second as we're able.

11 CHAIRMAN DEASON: Very well. All the parties
12 have a copy of the draft prehearing order, I take it.
13 We'll proceed through that draft.

14 Section I is case background. Any questions
15 or corrections to the background? Hearing none.

16 Section II describes the procedure for
17 handling confidential information. Let me ask the
18 parties at this point, is there going to be the need to
19 utilize confidential information at the hearing?

20 MR. PIERSON: Mr. Chairman, I'm informed by
21 Ms. Sanders that she is interested in using possibly
22 proprietary confidential information.

23 CHAIRMAN DEASON: I take it you have described
24 to her the procedures that have to be followed if
25 confidential information is to be utilized.

1 MR. PIERSON: I pointed her to this section of
2 the prehearing order.

3 CHAIRMAN DEASON: Very well.

4 MR. MCLEAN: Commissioner, there is some
5 controversy on that point because the records upon which
6 Ms. Sanders is going to rely were released from
7 confidentiality in the last rate case, so far as I know.
8 Probably best we let Ms. Sanders speak for herself on that
9 point, but I would like to let you know there may be some
10 controversy associated with that issue.

11 CHAIRMAN DEASON: The question being as to
12 whether the information is, in fact, confidential?

13 MR. MCLEAN: Yes, sir. There was definitely
14 some information released in the last case and I think it
15 is the same. However, Ms. Sanders is in a better position
16 to say whether it's, in fact, the same.

17 CHAIRMAN DEASON: Well, have there been any
18 motions for determination of confidentiality or motions
19 for protective orders or things of that nature filed in
20 this case?

21 MR. PIERSON: Yes, sir. There is a protective
22 order outstanding and there is a pending motion for
23 confidential classification.

24 CHAIRMAN DEASON: So that information will be
25 treated as confidential until the time it is ruled upon?

1 MR. PIERSON: Yes, sir.

2 CHAIRMAN DEASON: Very well. Section III
3 addresses posthearing procedures. Any questions, comments
4 or corrections concerning Section III?

5 Section IV addresses prefiled testimony and
6 exhibits. Any questions or corrections to Section IV?

7 Section V addresses order of witnesses.
8 Questions, changes, comments to order of witnesses?

9 Let me ask Staff a question. The original
10 draft that I was provided contained the issue numbers to
11 which each respective witness is responsible. Have
12 those been changed in the --

13 MR. PIERSON: Yes, sir.

14 CHAIRMAN DEASON: Okay. I noticed that there
15 was some discrepancies in there.

16 MR. PIERSON: Yes, sir.

17 CHAIRMAN DEASON: So the final draft as far as
18 you know is correct in that regard?

19 MR. PIERSON: To the best of my knowledge, I
20 believe that these numbers are correct.

21 CHAIRMAN DEASON: Okay. The parties have any
22 questions or comments concerning the order of witnesses?
23 Mr. Pfeiffer?

24 MR. PIERSON: Mr. -- I'm sorry.

25 CHAIRMAN DEASON: You may -- go ahead,

1 Mr. Pierson, that's fine, go ahead.

2 MR. PIERSON: I was going to just inform the
3 Chairman and the parties that we would like to have
4 Mr. McKeown and Mr. Kintz and possibly Messrs. Pierce and
5 Abbott testify at the beginning of the proceeding after
6 the customer testimony so that we can get them back to
7 work. I don't see any need to keep them there for
8 possibly two days before they testify, their testimony is
9 relatively short.

10 CHAIRMAN DEASON: This would be witnesses
11 McKeown, Kintz, Pierce and Abbott?

12 MR. PIERSON: At least Mr. McKeown and
13 Mr. Kintz, and possibly Mr. Pierce and Mr. Abbott.

14 CHAIRMAN DEASON: Comments from parties in
15 regard to that suggestion?

16 MR. PFEIFFER: We would not object.

17 CHAIRMAN DEASON: Public Counsel have any
18 objection?

19 MR. McLEAN: No objection.

20 CHAIRMAN DEASON: Ms. Sanders, I take it?

21 MS. SANDERS: Yes, sir, Mr. Deason, I apologize
22 for running late. I'm here on behalf of the water
23 district and we have no objection.

24 CHAIRMAN DEASON: Very well.

25 MR. McLEAN: Mr. Chairman, may I inquire, is

1 there any significance to Ted Bidy's name being listed
2 separately down there? That's one of the rebuttal witness
3 of the utility?

4 MR. PIERSON: On a slightly earlier draft, that
5 landed on the next page.

6 MR. McLEAN: Okay. Fine. There's no macro for
7 that one, Bob. (Laughter)

8 CHAIRMAN DEASON: Okay. With that one change
9 then I would take it that the order of witnesses will be
10 as contained in the prehearing order.

11 MR. PIERSON: Yes, sir.

12 MR. PFEIFFER: The only comment that I was going
13 to make, Chairman Deason, is that these -- we were just
14 handed a copy of the most recent draft of the prehearing
15 order this morning and we have obviously not checked the
16 witnesses against the issues as reconfigured and
17 renumbered and would want to do that.

18 MR. PIERSON: I might make a suggestion here.
19 There are a number of witnesses that have relatively thin
20 prefiled testimony, and we may be able to deal with them
21 rather quickly as well. There are some witnesses who are
22 going to be on the stand, I believe, quite a long time.

23 CHAIRMAN DEASON: Well, now, I think his comment
24 was in regard to the fact that there has been a revised
25 draft and he hasn't had a chance to actually review the

1 issue numbers for each individual witness in the final --

2 MR. PIERSON: Oh, that was it?

3 MR. PFEIFFER: Yes.

4 MR. PIERSON: I'm sorry.

5 MR. PFEIFFER: I thought there would be some
6 flexibility with regard to that.

7 MR. PIERSON: I thought you meant the order of
8 witnesses.

9 MR. PFEIFFER: No, that's fine.

10 CHAIRMAN DEASON: I think we normally allow
11 flexibility in regards to housekeeping matters of that
12 nature. And usually if something is identified shortly
13 after the prehearing order and the order has not yet been
14 issued, well, then Staff usually makes those type
15 corrections. So if there's items in here which need to be
16 corrected of that nature, I think that that could be done.

17 When do you intend to issue the order,
18 Mr. Pierson?

19 MR. PIERSON: It's due under the current
20 schedule on the 15th. And I believe you're going to be
21 out of town on the 13th and 14th; is that correct?

22 CHAIRMAN DEASON: I'm leaving going to a hearing
23 this evening, that's correct. The order is due the 15th?

24 MR. PIERSON: Yes, sir.

25 CHAIRMAN DEASON: And what day of the week is

1 that?

2 MR. PIERSON: It's a Friday.

3 CHAIRMAN DEASON: Friday. I would anticipate
4 that if you -- if any of the parties have any, after this
5 prehearing conference is over, if there are any
6 housekeeping-type corrections or modifications of that
7 nature, that you could submit those within a couple of
8 days following today; that Staff would make every effort
9 to incorporate those in the final version.

10 Section VI addresses basic positions. Any
11 changes or corrections to basic positions as they are
12 stated?

13 Section VII addresses specific issues and
14 positions. We will begin with Issue 1. Any changes or
15 corrections to Issue 1? Issue 2?

16 Now, Staff, I'm working from my earlier
17 version, so if I've asked questions that have already
18 been changed or modified, just let me know. I have just
19 indicated --

20 MR. PIERSON: Mr. Chairman, we have stipulated
21 quite a few issues and some issues have become nonissues
22 since then.

23 CHAIRMAN DEASON: Well, I have a final version,
24 just that all my notes are on the earlier version. So I'm
25 going to be doing a lot of turning, then, I suppose.

1 MR. PIERSON: I apologize for that. I should
2 have left the numbers as they were in the original.

3 CHAIRMAN DEASON: So you've renumbered the
4 issues; is that correct?

5 MR. PIERSON: Yes, sir.

6 CHAIRMAN DEASON: Well, Issue 2, my question was
7 that there's not a witness stated for the Utility
8 position. I think that is still the case. Is there a
9 witness to address Issue 2, Mr. Pfeiffer?

10 MR. PFEIFFER: It would be Brown, Seidman,
11 Coloney.

12 CHAIRMAN DEASON: Any other changes or
13 corrections for Issue 2? As I'm sure everyone has
14 noticed, the air conditioning is not working in the
15 building; so if anyone wants to remove their coats or
16 maybe even loosen your collar, that certainly would be
17 permissible. I'm already starting to sweat up here
18 myself.

19 Issue 3? Issue 4?

20 MR. PIERSON: Mr. Chairman, I believe we have an
21 agreement on Issue 4. I believe the Utility agrees with
22 Staff's position and that we could probably remove this as
23 an issue.

24 CHAIRMAN DEASON: Okay. Now, this is in the
25 most latest version of the prehearing order; correct?

1 MR. PIERSON: Yes, sir.

2 CHAIRMAN DEASON: Any objection to showing Issue
3 4 as a stipulated matter?

4 MR. McLEAN: Wait, wait, Commissioner, there
5 seems to be -- (Pause)

6 MR. PFEIFFER: There is a disagreement, Your
7 Honor, we consider the correct adjustment to be \$647 as it
8 is reflected in the issue presently. If Mr. Seidman
9 talked with the Staff about this issue yesterday, he and I
10 were not in a position to discuss --

11 MR. PIERSON: I'm sorry, it was the 647 that we
12 were prepared to agree to.

13 CHAIRMAN DEASON: So you're basically suggesting
14 that the issue itself be reworded to substitute 647 for
15 1,295?

16 MR. PIERSON: I was suggesting that this go in
17 the stipulation section.

18 CHAIRMAN DEASON: And that the number be 647?

19 MR. PIERSON: That the number be 647.

20 MR. McLEAN: Commissioner, we don't agree to
21 that.

22 CHAIRMAN DEASON: Okay.

23 MR. McLEAN: This is an improvement to a
24 leasehold? Is that the substance of what we're doing
25 here?

1 MR. PIERSON: Yes.

2 MR. McLEAN: And you all have changed your
3 position since yesterday?

4 MR. PIERSON: Yes.

5 MR. McLEAN: Well, then we'll no longer join
6 your position.

7 CHAIRMAN DEASON: Issue 4 then would still be an
8 issue. And I assume that the issue would still be worded
9 as contained and it would reflect -- the issue would
10 contain 1,295.

11 MR. PFEIFFER: And then Staff's position would
12 be changed to 647?

13 MR. PIERSON: Yes.

14 CHAIRMAN DEASON: Staff, you'll need to make
15 that change then in the final version.

16 Issue No. 5? Issue 6?

17 MR. PIERSON: Mr. Chairman, the Utility has
18 requested that Staff be a little more specific with what
19 we're getting at by this issue, and I just wanted to let
20 them know that these involved the Ben Johnson and Pebble
21 Beach properties.

22 CHAIRMAN DEASON: I'm sorry, you're just putting
23 them on notice as to the specific nature of the issue?

24 MR. PIERSON: Yes, sir.

25 CHAIRMAN DEASON: Issue 7? 8? 9? 10? 11? 12?

1 MR. PFEIFFER: We consider this an inappropriate
2 issue, Your Honor, it's our contention that it shouldn't
3 be an issue.

4 CHAIRMAN DEASON: Whose issue is this? Is this
5 Public Counsel's issue?

6 MR. McLEAN: Yes, sir, correct.

7 CHAIRMAN DEASON: Mr. McLean, could you respond
8 to that, please?

9 MR. McLEAN: Well, it's an historical issue that
10 the Commission uses time and time again.

11 We are looking to a comparison of other
12 utilities, comparable utilities who may or may not have
13 comparable expenses. The Commission has used it for
14 time immemorial. There are some cases which are
15 essentially centered on it.

16 You may recall the Florida Power Corp case
17 where they were after a -- I can't remember what exactly
18 they called it -- a corporate performance incentive, I
19 believe, where it was essentially the core. The
20 comparisons between their O&M expenses on a per-customer
21 basis were illustrated by color chart, at the top we
22 have "Customers per Employee," "Total Customers per
23 Regular Employee," and so forth.

24 I think it's a little silly to sit here and
25 argue that the Commission should not consider expenses

1 of similarly-situated utilities. I think it's fair game
2 for the Utility to suggest by means of the production of
3 evidence that these comparisons may be invalid, but that
4 it's a valid issue in the case I think is beyond
5 question.

6 A little bit of research on the part of the
7 utility might have disclosed an order as recently as the
8 Jasmine Lakes order, in which, I'll read for you from
9 your own order, "On cross examination the utility
10 witness Nixon testified that generally one could compare
11 the Staff of Mad Hatter to Jasmine. Witness Nixon also
12 acknowledged that the president of the Mad Hatter's
13 salary is about \$24,000 lower than Mr. Dreher's. And
14 here's the important part, I think. "While this
15 evidence is not in and of itself conclusive of excessive
16 salary, we find that it supports our conclusion that a
17 reduction to Mr. Dreher's salary is appropriate in this
18 case."

19 Since I have been associated with the
20 Commission in one form or another, the Commission has
21 always looked to a comparison of similar utilities to
22 see if their expenses made any sense. Not necessarily
23 as the last measure, but certainly one of the measures.

24 CHAIRMAN DEASON: Mr. Pfeiffer, do you care to
25 respond?

1 MR. PFEIFFER: Yes. I have no idea the basis of
2 the testimony of the witness in this other case about what
3 factors were comparable between Jasmine and Mad Hatter.
4 But I do know that the evidence offered by Public Counsel
5 in their prefiled testimony says nothing about
6 comparability between St. George Utility and a host of
7 other utilities that it sets out, other than they are all
8 Class B utilities. It is the only basis of comparison.

9 We have outstanding discovery that I think
10 probably would have revealed the documents that Counsel
11 has cited to you; however, they have responded to none
12 of our discovery requests. We have outstanding
13 discovery with regard to the comparability of the
14 utilities, none of those have been answered; in fact,
15 they have been objected to. And we consider the
16 comparison to be just utterly inappropriate.

17 The evidence that they have in their prefiled
18 testimony in the form that it's in is inadmissible. I
19 realize that for an issue perspective that's perhaps not
20 correctly before you but, Your Honor, the only basis of
21 the comparison that they're making is the designation of
22 Class B. And there are at least a skillion factors that
23 could make one utility's costs, expenses and other
24 financial issues extraordinary different from another's.

25 CHAIRMAN DEASON: Staff, any comments?

1 MR. PIERSON: I would just say that Staff does
2 traditionally look at other similarly-situated utilities
3 to get a kind of a benchmark notion of where the utility's
4 expenses are.

5 CHAIRMAN DEASON: I'm going to overrule the
6 objection and I'm going to let the issue stand. I would
7 note that the nature of the objection is more to the
8 relevance of the specific evidence that is or may be
9 presented and as to whether it is appropriate evidence and
10 not so much as to whether this is an appropriate issue.
11 The issue will stand.

12 MR. PFEIFFER: Thank you.

13 CHAIRMAN DEASON: Issue 13? Issue 14? Issue
14 15? Issue 16? Issue 17? Issue 18? Issue 19? Issue 20?
15 Issue 21? Issue 22? Issue 23? Issue 24? Issue 25?
16 Issue 26? Issue 27? Issue 28? Issue 29?

17 MR. PIERSON: Yes, Mr. Chairman, Staff's
18 position is changed to, "No."

19 CHAIRMAN DEASON: Okay. Issue 30? Issue 31?
20 Issue 32? Issue 33? Issue 34? What specifically is at
21 issue in 34? Staff's position is they need to be
22 reviewed, But is Staff taking issue with those in this
23 case?

24 MR. WILLIS: Commissioner, in this case, this
25 case is very similar to most water and wastewater cases in

1 which we're only reviewing the service availability level.
2 We reset the service availability charges of this Company
3 in the very last rate case and raised those charges; and
4 if there are any major changes to rate base or anything
5 coming out of this, we would just like to have the
6 opportunity to review to make sure the Utility won't be
7 exceeding the 75% limit. That's what this issue is all
8 about. If they won't be exceeding the 75% limit, there
9 won't be anything to this issue.

10 CHAIRMAN DEASON: I see. Issue 35? Issue 36?
11 Issue 37? Issue 38? Issue 39? Issue 40?

12 MR. PFEIFFER: Time out?

13 CHAIRMAN DEASON: Certainly. (Pause)

14 MR. PFEIFFER: Thank you. We've caught back up,
15 thank you.

16 CHAIRMAN DEASON: Okay. I'll repeat. Issue 40?
17 Issue 41? Issue 42?

18 MR. BROWN: We have that deed recorded.

19 CHAIRMAN DEASON: Staff, what type evidence are
20 you looking for in this issue?

21 MR. PIERSON: A recorded deed, Mr. Chairman.

22 CHAIRMAN DEASON: Okay. So you will maintain
23 this is an issue and then leave it up to the Utility to
24 provide that as evidence in the case?

25 MR. PIERSON: Yes, sir.

1 MR. BROWN: We had shown them the unrecorded
2 yesterday, that's the recorded deed. (Provides document
3 to Mr. Pierson.)

4 CHAIRMAN DEASON: We'll leave this as an issue;
5 and if Staff, in the meantime, determines that's
6 sufficient, I'll give Staff the authority to, if need be,
7 just eliminate this issue. I notice that no other parties
8 have taken a position on this matter.

9 MR. PIERSON: Thank you, Mr. Chairman.

10 CHAIRMAN DEASON: That concludes specific
11 issues. Section VIII addresses exhibit list. Any changes
12 or corrections to the exhibit list?

13 MR. PFEIFFER: We need to go through this list,
14 Your Honor.

15 CHAIRMAN DEASON: We do need to go through this
16 list?

17 MR. PFEIFFER: There are a number of pieces of
18 it that have appeared in this listing for the first time
19 today. I merely want to check them and I will get with
20 Counsel before Friday if there are any changes from our
21 perspective.

22 CHAIRMAN DEASON: Perhaps we need to be a little
23 bit more specific as to the deadline for getting changes
24 or corrections to you, Mr. Pierson. When do you
25 absolutely have to have that information to be able to

1 incorporate it into the final prehearing order?

2 MR. PIERSON: Thursday.

3 CHAIRMAN DEASON: Thursday by noon?

4 MR. PIERSON: That would be fine, yes.

5 CHAIRMAN DEASON: I would just request that if
6 the parties have corrections, that they present those to
7 Mr. Pierson by noon on Thursday.

8 I understand, Mr. Pfeiffer, you just need some
9 time to review this exhibit list to make sure that it's
10 complete.

11 MR. PFEIFFER: Yes, sir. I'm confident that
12 they've done a nice job of moving what we provided them to
13 this sheet, but I would like to assure myself of that.

14 CHAIRMAN DEASON: Surely. And we'll give you
15 that opportunity.

16 MR. PIERSON: Mr. Chairman, Staff is satisfied
17 with the deed that we've been handed today and we're going
18 to drop Issue 42.

19 CHAIRMAN DEASON: Okay. Show then that Issue 42
20 is being deleted.

21 Section IX addresses proposed stipulations and
22 there are a number of those. Instead of going through
23 each one, I'm just going to ask if there are -- if any
24 party has any changes or corrections or modifications to
25 any of the proposed stipulations as contained in the

1 draft prehearing order?

2 MR. PFEIFFER: Again, if we could have until
3 Thursday to report any quarrels to Mr. Pierson? This is
4 the first time that these have appeared in this format in
5 this draft order?

6 MR. PIERSON: This is the first time that six of
7 them have appeared. I think it's six.

8 CHAIRMAN DEASON: Okay. We'll give you that
9 opportunity until noon Thursday; and, of course, that
10 opportunity is available to all parties to do the same.
11 But it's your representation, Mr. Pierson, that this is an
12 accurate presentation of the stipulations as you
13 understand them?

14 MR. PIERSON: Yes, sir. There were five issues
15 identified late yesterday afternoon, I believe, five, that
16 Public Counsel and the District had agreed with Staff's
17 position, and the Utility has since agreed with Staff's
18 position on those and I have placed them in here as well.

19 MR. PFEIFFER: They're largely computational
20 issues?

21 MR. PIERSON: Yes.

22 MR. PFEIFFER: Your calculator was better than
23 our calculator?

24 CHAIRMAN DEASON: Okay. Section X addresses
25 pending motions and other matters. I understand that

1 there are a number of motions? In fact, are there more
2 motions than what you have listed in the prehearing order,
3 Mr. Pierson?

4 MR. PFEIFFER: Yes, Your Honor.

5 MR. PIERSON: Yes, sir, there are.

6 CHAIRMAN DEASON: Okay. What we're going to do
7 at this time, I'm going to take ten minutes; and, Mr.
8 Pierson, I'm going to ask you to update your list of all
9 the motions and I assume parties will be prepared -- let
10 me ask the question. The latest motions, I understand
11 that the time to respond has not yet run. Would it be the
12 desire to discuss those or orally argue those today or do
13 parties for those motions desire to have the full time to
14 respond in writing?

15 MR. PFEIFFER: Mr. McLean and I, I believe,
16 agree that if we could argue and resolve those motions
17 today that it would serve all of us.

18 MR. McLEAN: I agree, assuming we have all the
19 motions.

20 CHAIRMAN DEASON: What I'm going to do is give
21 all the parties an opportunity to make sure that we have
22 what the outstanding motions are and to make sure that we
23 have a consistent, complete list. Mr. Pierson, once
24 you've got that, I'd like for you to come down to my
25 office and present that to me and then we'll reconvene in

1 about 10 or 15 minutes. And hopefully we can resolve all
2 of this this morning.

3 MR. PIERSON: Thank you.

4 (Brief recess.)

5 - - - - -

6 CHAIRMAN DEASON: Call the prehearing conference
7 back to order. We have a number of motions which need to
8 be addressed; and to give some order and organization
9 here, I'm going to propose that the first motion we
10 address would be Public Counsel's Motion to Compel which
11 was filed on June 28th and St. George's response thereto,
12 which was filed on July 5th. Mr. McLean, it's your
13 motion.

14 MR. MCLEAN: Yes, sir. It is going to take a
15 minute to figure out just which one it is. (Pause) Okay.

16 Commissioner, this addresses our second set of
17 interrogatories and request for production of documents.
18 The history in the case is, we filed an initial first
19 set and got those pretty much out of the way by a
20 Commission order. There was some disputes which arose
21 in association with the first set, but those disputes
22 were settled by an order of the Commission which is
23 entitled "Order Resolving Discovery Motions."

24 Now, the original -- the second and third sets
25 of discovery were filed, as I recall, before the

1 Commission's original order establishing procedure. The
2 Commissioners' original order establishing procedure
3 severely limited the number of interrogatories and
4 production of documents which could be filed by any
5 party in the case. And argument was advanced by the
6 utility that our second and third set exceeded both of
7 those limits.

8 However, about a week after the original order
9 establishing procedure issued, I filed an emergency
10 motion suggesting that the discovery was unduly
11 restrictive and that we should be allowed to file a
12 greater number of both production of documents and
13 interrogatories.

14 In the later Commission order to which I
15 referred, the order resolving discovery motions, the
16 Commission considered the emergency motion to expand and
17 attempted -- made a good-faith attempt, to resolve all
18 pending discovery issues up to that point. And it
19 referred to the second set, second and third sets, which
20 is the subject of the instant motion.

21 On Page 2 of the order, the Commission
22 addressed that by saying, "As the limits on the number
23 of interrogatories and PODs have increased by this
24 order, the Utility's objections on this basis are now
25 moot." Now, we took that to mean -- and I think any

1 reasonable person would take that to mean -- that the
2 objections advanced by the Utility to the second and
3 third sets of discovery were no longer in effect. And
4 that the second and the third -- the answers and the
5 responses to the second and third sets pending were due
6 in accordance with the terms of this order.

7 The Utility took the view that those words
8 that I read you essentially excused them from any
9 compliance with the second and third sets despite the
10 fact that no argument was made that their number
11 exceeded the number permitted by the expansion order,
12 the order resolving discovery.

13 So that discovery has been pending, the
14 majority of those two sets has been pending since we
15 filed them back in the early spring. Pardon me just a
16 second. (Pause)

17 Now, there were some in the order resolving
18 discovery with which -- to which the Commission made
19 specific reference. But with respect to the balance of
20 those, those have not been answered as of this date and
21 they are long overdue. As you will see later, some of
22 those responses are the ones upon which we have
23 conditioned our own response in their requests.

24 CHAIRMAN DEASON: Mr. Pfeiffer, would you care
25 to respond?

1 MR. PFEIFFER: I am the unreasonable person to
2 whom Mr. McLean referred.

3 Surely, after I was hired in this proceeding
4 dealing with this order and dealing with the Utility's
5 obligations to produce discovery in accordance with this
6 order came to me. I read the same paragraph that
7 Mr. McLean read. I also read the paragraph that said,
8 "To the extent set forth below, OPC's Motion to Compel
9 is granted in part and denied in part. OPC's second
10 Motion to Compel is granted as set forth below," and
11 there were a number of interrogatories, a number of
12 document requests listed.

13 And in response to that, I got all those
14 document requests together and discussed with my client
15 their obligations to produce these documents and answer
16 these interrogatories, and we did that as quickly as we
17 could.

18 In fact, we did it more quickly even than the
19 order requires. It required a response within five
20 days; it was served by mail and we added five days to
21 that, but I advised Mr. McLean by telephone
22 conversation, I believe it was on May 20th, that the
23 document was available -- the documents were available
24 in Mr. Brown's office.

25 The following week I filed a response to the

1 motion to compel indicating compliance, in which I
2 stated that the documents were available in my office.
3 We thought it would be more convenient for Mr. McLean to
4 come to my office to look at those documents rather than
5 to Mr. Brown's, which is on the north end of town. That
6 was filed on May 26th.

7 They sat in my office and they sat in my
8 office and they sat in my office until late in June, the
9 21st, when at a deposition in this proceeding,
10 Ms. Dismukes asked me if she could come review the
11 documents and we arranged a time for her to do that the
12 next day. She did that and it was then that
13 Ms. Dismukes learned for the first time that we had this
14 quarrel about discovery.

15 Now, I was surprised when I heard from
16 Ms. Dismukes later that afternoon, by telephone, that
17 she felt that we were withholding documents in
18 accordance with the order granting the motion to compel.
19 But I got in touch with my client and I discussed the
20 issues and I discussed them with Ms. Dismukes. She told
21 me, as Mr. McLean told you today, that my reading of the
22 order is unreasonable.

23 I don't think my reading of the Order is
24 unreasonable, but we're willing to produce the documents
25 and we want to produce the documents. However, by the

1 time this thing came to us, we were in the midst of
2 trying to prepare our prefiled rebuttal testimony which
3 sapped the entire staff of this small Utility, putting
4 it together; and I guess that sapping of our staff is a
5 subject for our later motion here today.

6 We're willing to give them the documents, Your
7 Honor. I don't think that it's fair that we should have
8 to answer interrogatories at this last date. And I
9 would point out to you that this whole quarrel would not
10 have come to you at this point in this case, but would
11 have been resolved last May, if there had been some
12 effort to review these documents in accordance with a
13 request that was called a "huge emergency" way back in
14 May, and wasn't even dealt with a lick until late in
15 June.

16 CHAIRMAN DEASON: Closing comments, Mr. McLean?

17 MR. McLEAN: Yeah, I'd like to respond to that.
18 The discovery has been pending since February and March.
19 If they were at all concerned about getting strapped later
20 in the case they could have provided the answers with
21 which, even of this writing, we do not have.

22 They say they are willing to produce the
23 documents. What they produce is an opportunity to go
24 over to their office and look for the documents. That's
25 the best deal we've gotten from them so far. We would

1 love to have the documents. And our interrogatories
2 have been pending for nearly five months. There have
3 been plenty of opportunities for them to answer. Thank
4 you.

5 CHAIRMAN DEASON: When can those documents be
6 made available for Public Counsel's inspection?

7 MR. BROWN: By Friday.

8 MR. PFEIFFER: Friday.

9 MR. McLEAN: Commissioner, we would ask you to
10 identify now a sanction to apply to the Utility if they
11 are not available on Friday. Because we have heard that
12 before.

13 MR. PFEIFFER: I would certainly ask that you
14 identify a sanction for Public Counsel if they don't show
15 up until Monday. I mean that's --

16 CHAIRMAN DEASON: That's enough. I'm ready to
17 rule. The documents in question will be made available on
18 Friday for Public Counsel's inspection.

19 MR. McLEAN: Commissioners, does that include
20 Document Request No. 25? There is a separate --

21 MR. PFEIFFER: If I may be heard with regard to
22 Document No. 25, Your Honor?

23 CHAIRMAN DEASON: Yes, Mr. Pfeiffer.

24 MR. PFEIFFER: There is a request relating to
25 Document No. 25. It is a memorandum between Mr. Seidman

1 and Mr. Brown. It is clearly work product in this case.
2 Our objection to that interrogatory was filed late, and
3 it's because of that that the production of that document
4 was compelled.

5 We would ask, Your Honor, that it is clearly a
6 work product document, it deals with litigation strategy
7 in this case, it's not something that they would be
8 entitled to discover and we ask that you reconsider that
9 one request. And Mr. Brown would like to speak to that
10 issue as well.

11 CHAIRMAN DEASON: Mr. Brown?

12 MR. BROWN: Very briefly, Your Honor.

13 This is a document that was never requested in
14 the first place. Not only do we object to it, but what
15 they asked for was a memoranda between the Utility
16 Company and its consultant Mr. Seidman.

17 What exists is a document between Gene D.
18 Brown law firm as an attorney for the Utility Company
19 and Mr. Seidman. So it was never requested. We never
20 considered that confidential attorney-client
21 correspondence between an attorney and his client was
22 included within a document for us which only identified
23 correspondence between the Utility Company.

24 Granted, I've worn both hats from time to
25 time, which I think has saved the ratepayers a great

1 deal of money since I'm not charging anything for my
2 time, but up until recently I served as attorney for the
3 Utility Company. I think the request asking for
4 correspondence between the Utility Company and
5 consultants does not encompass or net in documents
6 between an attorney --

7 CHAIRMAN DEASON: Mr. Brown, don't you have an
8 obligation to identify the existence of such a document
9 and to request that it be subject to a specified
10 privilege?

11 MR. BROWN: We have, we've objected every step
12 of the way. We've taken Mr. Seidman's deposition; and he
13 identified what it was, he identified that it was on Gene
14 Brown attorney stationery. And I said in the deposition
15 that I considered that to be attorney-client work product,
16 as clearly as I knew how to talk.

17 CHAIRMAN DEASON: Mr. McLean?

18 MR. McLEAN: There are three items,
19 Mr. Chairman. Number one, you'll find that Mr. Brown
20 changes more than hats as it goes along to suit his
21 purposes. He wears an astonishing number of different
22 cloaks as suits his purposes. He will touch this
23 document --

24 MR. PFEIFFER: Your Honor, I object to the
25 jury's speech, this has nothing to do with this motion.

1 MR. McLEAN: I thought I heard the same thing
2 from your client, Mr. Pfeiffer, as an attorney. And how
3 many attorneys am I arguing against this morning, anyway,
4 down there?

5 CHAIRMAN DEASON: Mr. McLean, let's address the
6 specifics of why Document 25 should be produced and why it
7 should not be a subject of privilege.

8 MR. McLEAN: Yes, sir. When he touches the
9 document as an attorney, it does not render the matter
10 attorney-client privilege, as the recent Southern Bell
11 case very clearly states.

12 Lastly, the Commission has already ruled on
13 Document 25. Please direct your attention to Page 5 of
14 the order resolving discovery motions wherein there is
15 an entire paragraph devoted to Document Request No. 25.

16 Mr. Brown is also the manager of the Utility
17 and he has given directions to his expert witness and we
18 would like to know what those directions are. And the
19 Commission has already ruled in our favor one time and
20 the document is long overdue.

21 CHAIRMAN DEASON: Okay. I do note that
22 Commissioner Johnson addressed Document No. 25 in her
23 Order 94-0571, and that at that time it was her
24 determination that that information should be produced
25 within five days. and that I know of no request filed on

1 behalf of St. George Island to the Commission stating that
2 that document should be subject to a privilege. And,
3 therefore, I am going to allow Commissioner Johnson's
4 Order to stand; and Document 25 will be made available
5 along with other documents on Friday.

6 That disposes of Public Counsel's Motion to
7 Compel filed June 28th and the response thereto filed
8 July 5th. The next motion I believe would be useful to
9 address would be St. George Island Utility's Motion to
10 Compel or, in the Alternative, Motion in Limine, which
11 was filed on July 5th. Mr. Pfeiffer, that's your
12 motion.

13 MR. PFEIFFER: Yes, Your Honor. We served
14 interrogatories on Public Counsel that included
15 Interrogatories Nos. 11 through 28. These interrogatories
16 asked that Public Counsel provide us with information
17 regarding the comparison that they purported to make
18 between charges and costs to St. George Island Utility and
19 to other Class B providers.

20 None of the documents that would have
21 supported any of the information that is in the prefiled
22 testimony is part of the prefiled testimony. What we
23 have in the prefiled testimony is a summary or an
24 extraction, if you will, of numbers from one document
25 that's placed into another document. We feel that those

1 base documents would reveal other things, too, and that
2 the other things that they would reveal would
3 demonstrate that the comparison between these Class B
4 Utilities, these other Class B Utilities and St. George
5 Island Utility, is inappropriate. And that's why we
6 asked for the interrogatory.

7 The objection was that we were asking them to
8 investigate our case for them, first; and second, that
9 they don't have the document.

10 Now, asking them to investigate their case for
11 them may be a reasonable objection under some
12 circumstances; but the appropriate thing for Public
13 Counsel to do would have been to offer to produce
14 records in accordance with the Rules of Civil Procedure.
15 Their statement that they're not in possession of the
16 records would lead to a conclusion inescapable, Your
17 Honor, that that summary -- those two summaries,
18 Schedules 2 and 3, attached to Ms. Dismukes' prefiled
19 testimony are inadmissible in the hearing in this case
20 because they are hearsay. In order to be admitted,
21 Public Counsel would need to provide those base
22 documents to us so that we can make a comparison and
23 ensure that the lifting of numbers from one document
24 onto another that she has purported to make are
25 accurate. And we, I think, are entitled --

1 CHAIRMAN DEASON: Mr. Pfeiffer, let me interrupt
2 you just so I can understand. Are you saying that Public
3 Counsel has basically answered your interrogatories saying
4 they do not have the information, or they're just saying
5 they're not going to produce --

6 MR. PFEIFFER: No, sir, they have objected.

7 CHAIRMAN DEASON: They have objected. So
8 they've not answered one way or the other --

9 MR. PFEIFFER: They have not answered, they have
10 not said a word. They have simply objected, stating they
11 don't want to undertake this effort to reasonably compare
12 these other Class B utilities.

13 CHAIRMAN DEASON: Does that conclude your
14 remarks concerning that motion? (Pause)

15 MR. PFEIFFER: Yes, sir. We do contend that
16 those schedules attached to the Dismukes testimony would
17 be inadmissible unless the base documents are requested.
18 We will certainly object to those exhibits at the hearing
19 in this case unless the base documents are produced for
20 us. We feel it's their obligation to produce them and to
21 answer these interrogatories.

22 CHAIRMAN DEASON: Mr. McLean?

23 MR. MCLEAN: Well, Mr. Chairman, Mr. Pfeiffer
24 mentioned documents a great deal, given that his argument
25 is essentially one of interrogatories. He asks us

1 questions and we are obliged to answer questions as best
2 we can, not to provide him any documents, first of all.
3 But that's not really the basis of our objection.

4 Let me say, first of all, that with respect to
5 documents -- Mr. Pfeiffer spoke mostly of, I'm sorry,
6 Interrogatories 11 through 28. We have no objection to
7 producing all other interrogatories and we'll get to
8 that later. They're on the table, ready to go when we
9 get what we want from them. So this argument is only
10 directed to 11 through 28.

11 Ms. Dismukes walked over --

12 CHAIRMAN DEASON: Now, 11 through 28 is
13 specifically to Schedules 2 and 3 concerning the
14 comparison of costs between Class B utilities?

15 MR. McLEAN: Yes, sir. 11 through 28 are
16 questions from the Utility which deal with the comparison
17 which Ms. Dismukes drew. I would like you to know how she
18 drew them. She walked over here to the Commission, read
19 the annual reports, and drew some conclusions from those
20 annual reports and that is the basis of her testimony.

21 Now, Mr. Pfeiffer, over Mr. Pfeiffer's
22 signature, has asked for a number of pieces of other
23 information with respect to the utilities, not
24 necessarily with respect to the annual reports. And
25 might I say as an aside, we'll be happy to produce the

1 annual reports if they want to pay for the copying and
2 so forth, but they can come get them themselves. But
3 that's not really the center of our dispute. The center
4 of our dispute is that they want a great deal more than
5 the things upon which Ms. Dismukes relied.

6 As is stated in my objection to their
7 discovery, they would like to know the Public Service
8 Commission's docket number relating to the most recent
9 rate case involving the Utility. That is a matter which
10 is clearly available to the Utility, upon which we did
11 not rely. The number of customers served by the Utility
12 and the average daily volume of water distributed by the
13 Utility. If the Utility wants to know that, that's well
14 and good; we don't know it and we didn't rely on it.

15 The length of the Utility's core transmission
16 line and the length of the Utility's distribution
17 system. Again, information supposedly available to the
18 Utility and arguably available to us, if it were our
19 burden to go out and prove their case for them. But it
20 is not. We don't not know the answer and we didn't rely
21 on it in any way.

22 With respect to letter D, whether the Utility
23 is protected from competition from private wells or
24 other alternative water supplies, how are we supposed to
25 know that? We don't care whether it's true; we don't

1 think it's relevant; and it isn't our burden to go show
2 the weakness in our own testimony -- if there is a
3 perceived weakness, we don't think there is. But what
4 is it our business to go investigate --

5 CHAIRMAN DEASON: Well, Mr. McLean, let me ask
6 you this question. Instead of objecting to that, why did
7 you not simply answer that you do not know; you don't have
8 the information; you didn't rely upon it and you don't
9 care?

10 MR. McLEAN: The real reason for that is,
11 believe it not, because if I said I didn't know, they
12 wouldn't have had their answer until 20 days after that.
13 I made it clear to Mr. Pfeiffer at the time and we even
14 had a joke about it, that if I gave him an objection in
15 accordance with the order establishing procedure, that he
16 would know that he is going to have trouble with our
17 discover 20 days earlier than he otherwise would have. I
18 easily could have said, "I do not know"; and I say now, we
19 don't know the answer to any of those questions. We could
20 go and investigate and find out. But that's not our job,
21 particularly since we did not rely on any of that
22 information.

23 What Mr. Pfeiffer would like to do -- and it's
24 exactly what I would do were I in his shoes. I would
25 like to test that comparison and show what infirmities

1 it might have. But it isn't our burden to go find those
2 infirmities, it is his. Had we relied on any of those
3 matter, well, perhaps so. And if we had done these
4 computations -- if you should grant their motion,
5 Ms. Dismukes is going to have to sit down with a
6 calculator for three or four days and figure out some of
7 this. Apparently, she's going to have to go down to the
8 Utility and look around for private wells and so forth.
9 We don't know any of those answers.

10 I think implicit in our objection,
11 incidentally, is the notion that we do not know. But
12 the reason that I didn't object was I wanted to give
13 them 20 more days to know that there were problems with
14 the discovery because Mr. Pfeiffer was new to the case
15 and I wanted to be as up-front with him as possible.

16 CHAIRMAN DEASON: Mr. Pfeiffer --

17 MR. PFEIFFER: And we are so appreciative of
18 that.

19 To reiterate, Your Honor, we believe that
20 they're required to respond to the interrogatory. We
21 believe that if their response is that it's just too
22 much work for them to answer it, that they are obliged
23 to produce records. At an absolute minimum, they must
24 have in their possession the records that support their
25 own summaries. And they ought to produce those in lieu

1 of answering the interrogatories. At an absolute
2 minimum if they don't have those, their summaries are
3 inadmissible.

4 CHAIRMAN DEASON: Okay. I'm going to rule that
5 to the extent Public Counsel has information at its
6 disposal that it relied upon or has knowledge that was
7 relied upon in comparing, tabulating and assembling those
8 exhibits, that all that information be presented and
9 presented to St. George Island Utility within five days.

10 To the extent that there is information
11 requested that Public Counsel did not rely upon and does
12 not have access to that information, that it be so
13 stated in response to those interrogatories.

14 MR. PFEIFFER: Thank you.

15 CHAIRMAN DEASON: I believe that disposes of
16 that motion.

17 Mr. Pfeiffer, let me state that once you get
18 those answers and you wish to challenge the
19 admissibility of Schedules 2 and 3, you may do so at the
20 hearing.

21 MR. PFEIFFER: Yes, sir. Thank you. Thank you,
22 Mr. Chairman.

23 CHAIRMAN DEASON: I want to clarify something
24 which I stated earlier in response to the first two
25 matters which we addressed, and that had to do with

1 Question 25 and the privilege assertion which was being
2 made. I believe that there was an assertion made of
3 privilege but it was made before Commissioner Johnson's
4 ruling, and that I'm going to abide by her ruling. And I
5 do note that there was no effort by the Utility's part to
6 seek review of that previous ruling by Commissioner
7 Johnson within ten days as specified within our rules.
8 And that's the basis for maintaining that Document 25 or
9 Question 25 would be presented to Public Counsel on
10 Friday.

11 MR. PFEIFFER: Thank you.

12 CHAIRMAN DEASON: The next motion which we need
13 to address is St. George Island Utility's Second Motion to
14 Compel. Which was filed, I believe, on the 11th of July.
15 Mr. Pfeiffer, that's your motion.

16 MR. PFEIFFER: You would think from Public
17 Counsel's response to our interrogatories in this case
18 that St. George Island Utility has produced no information
19 for Public Counsel in this case; has answered no
20 interrogatories; has made no documents available; and you
21 would think that Public Counsel has made reams of
22 information available to St. George Island Utility.
23 Exactly the opposite is true. Whole forests have been
24 chopped down to provide documents to the staff of the
25 Public Service Commission and the Public Counsel in this

1 case --

2 MR. McLEAN: May I interrupt to ask Mr. Pfeiffer
3 if he's advancing a jury argument at this time or a legal
4 argument?

5 CHAIRMAN DEASON: Mr. Pfeiffer, just --

6 MR. PFEIFFER: I was just getting wound up, I
7 was just getting to the good part.

8 CHAIRMAN DEASON: Yeah. (Laughter)

9 MR. PFEIFFER: And he knew that.

10 MR. PIERSON: He's interrupting the best part.

11 CHAIRMAN DEASON: Timing is everything, right?

12 MR. PFEIFFER: Right.

13 CHAIRMAN DEASON: Please continue.

14 MR. PFEIFFER: This objection that we have not
15 produced documents for them, therefore, they will not
16 answer our interrogatories and produce documents for us,
17 is simply not a valid objection. I'm not surprised that
18 they didn't cite any cases in support of their motion
19 there because I don't think they would find any that would
20 support a motion under these circumstances.

21 We had valid reasons for not producing
22 documents, I believe, to Public Counsel prior to today,
23 Chairman Deason, and they have no valid reasons for not
24 answering those interrogatories and producing documents
25 to which they have lodged no objection. They ought to

1 do these things and they ought to do them forthwith.

2 CHAIRMAN DEASON: Mr. McLean, I understand this
3 information is available?

4 MR. McLEAN: Yes, sir.

5 CHAIRMAN DEASON: When can you produce it?

6 MR. McLEAN: As soon as we get theirs. The
7 validity of their --

8 CHAIRMAN DEASON: Well, now, let's -- why is
9 that a valid objection?

10 MR. McLEAN: Well, I learned it in the third
11 grade. If you are constantly frustrated by continuing
12 efforts to get something and you can't get it -- and even
13 you have ruled adversely on the issue of the validity of
14 their resistance to our inquiries.

15 MR. PFEIFFER: I object, that's not what the
16 Chair ruled.

17 CHAIRMAN DEASON: I know what I ruled. Go
18 ahead.

19 MR. McLEAN: And it is time for them to give us
20 the documents that have been pending for five months. I
21 can produce them now, if I'm ordered to do so. I would
22 greatly -- I can't produce the documents, I can tell them
23 where they are and take them to their office and show them
24 where they can conveniently go through them.

25 With respect to the interrogatories, I have

1 had the answers ready since the day they were due
2 because I don't make a habit of filing those things
3 late. But we are tired of fighting with them over
4 discovery and it looks like we have finally come up with
5 a device by which we can obtain compliance.

6 The answer to your question, Mr. Chairman, is
7 they are available now.

8 CHAIRMAN DEASON: Okay. Today is Tuesday?

9 MR. McLEAN: Yes, sir.

10 CHAIRMAN DEASON: The interrogatory responses
11 that you have available and are ready to file, I would --
12 if they are ready, I see no reason why they can't be filed
13 by the close of business today. For the documents which
14 you have available, I would think that they need to work
15 out a convenient time; I would think no later than Friday
16 of this week, those should be made available for the
17 inspection by Mr. Pfeiffer or whomever else he wishes to
18 inspect those documents.

19 MR. McLEAN: Maybe they can do it when they
20 bring the documents over, just a suggestion.

21 CHAIRMAN DEASON: Well, they're going to have to
22 show you some documents and so I'm sure that you all can
23 coordinate what best schedule needs to be determined.

24 MR. McLEAN: Yes, sir.

25 CHAIRMAN DEASON: That addresses the second

1 motion to compel.

2 The next item we will address is Public
3 Counsel's Motion for Leave to File Supplemental
4 Testimony which was filed on the 28th of June. And St.
5 George Island Utility's response to that, which was
6 filed, I believe, on July 5th. Mr. McLean?

7 MR. McLEAN: Very briefly, Mr. Chairman, I think
8 the motion stands as written. And the reason for the
9 motion is because of these discovery disagreements between
10 us and the Utility which you've heard this morning. The
11 testimony does not add issues to the case, it is mostly a
12 discussion of those things which we do not have and upon
13 which we can't rely.

14 Thank you, sir.

15 CHAIRMAN DEASON: When do you propose to file
16 this testimony, assuming that you get to review the
17 documents as I've ordered on Friday?

18 MR. McLEAN: It is physically filed as we speak.
19 But I think -- I'm not sure that it is -- I don't know
20 exactly what their official procedures are, but it is in
21 the bosom of the the Commission at this time. You
22 actually have it, the Clerk actually has it.

23 CHAIRMAN DEASON: Well, I'm at a little bit of a
24 loss then. What's the necessity of filing supplemental
25 testimony -- if you already have the information upon

1 which to base that supplemental testimony, what was the
2 delay in preparing that supplemental testimony, why was it
3 not filed when all testimony was due?

4 MR. McLEAN: Well, because we didn't know what
5 we weren't going to get. It's primarily a recitation of
6 what we did not get.

7 CHAIRMAN DEASON: So the supplemental testimony
8 is a description of information upon which Public Counsel
9 believes the case needs to be based, but information which
10 has not been made available?

11 MR. McLEAN: Let me get a moment of advice.

12 (Pause)

13 When the direct testimony was prepared, we
14 didn't have the answers to the PODs and interrogatories
15 which we received since that time. I stand corrected;
16 the supplemental testimony is more a view of those
17 matters than it is what we have not received as yet.

18 CHAIRMAN DEASON: So there's information that
19 you either did not have or did not have time to analyze at
20 the time your direct testimony was due?

21 MR. McLEAN: That's correct, sir.

22 CHAIRMAN DEASON: And why was that
23 information -- why was it that you did not have the
24 information so that all the testimony that you think you
25 need to file in this case could have been filed on the

1 date specified in the procedure order?

2 MR. McLEAN: Because the answer to the PODs were
3 not received until after the direct testimony was filed.

4 CHAIRMAN DEASON: Were not received or were not
5 reviewed?

6 MR. McLEAN: Were not received.

7 CHAIRMAN DEASON: Okay. Mr. Pfeiffer?

8 MR. PFEIFFER: I would reiterate a time
9 sequence. Public Counsel's prefiled testimony was due on
10 May 25th. The Commission's Order dealing with discovery
11 was issued, I believe, on May 13th. On May 20th, I
12 advised Mr. McLean that the documents were available for
13 production by a filed response to the order. I indicated
14 on May 26th that they were available for production in my
15 office. It was not until June 22nd until anyone looked at
16 those documents.

17 Perhaps a delay would be justified under these
18 circumstances here; but those documents were produced on
19 June 22nd, we received this prefiled testimony yesterday
20 evening.

21 CHAIRMAN DEASON: Mr. McLean, what was the delay
22 in reviewing the information from the time that you were
23 told that it was available until June 22nd.

24 MR. McLEAN: Ms. Dismukes was on maternity
25 leave, she was adding to her family at that time.

1 MR. PFEIFFER: And I would say in response to
2 that, with just a phone call, other than the confidential
3 documents, I would have been happy to send copies and, in
4 fact, did that after the documents were produced on June
5 22th. And I don't want you to think that anyone on the
6 St. George Island Utility side is antifamily or antichild,
7 we've produced a bunch of them over here, too.

8 MR. McLEAN: I wouldn't suggest that. In fact,
9 the contrary is true. But the fact is that the rules
10 require you to produce the documents or tell us where they
11 are if it's inconvenient. If it was so easy to produce
12 them, that's what you should have done, as opposed to
13 telling us where we could go find them.

14 CHAIRMAN DEASON: Okay. Mr. Pierson, what's
15 Staff's position on this matter?

16 MR. PIERSON: I don't suppose Staff really
17 objects to the supplemental testimony. It will put a bit
18 of a burden on Staff because, unlike the other parties,
19 Staff has to review both the stuff filed by St. George
20 Island and the stuff filed by Public Counsel. But I
21 believe we can probably deal with it.

22 CHAIRMAN DEASON: Mr. McLean, you stated we have
23 the testimony?

24 MR. McLEAN: All seven pages have been
25 physically filed; all the parties, I believe, have been

1 provided with a copy. We filed it as we normally file
2 testimony, with the addition of hand delivery to the Staff
3 and to St. George. Ms. Sanders may not have it.

4 CHAIRMAN DEASON: I'm going to reserve ruling on
5 that, I want to review that testimony. After I have
6 reviewed the testimony, I'll make a ruling and Mr. Pierson
7 will communicate that ruling to all parties today.

8 The next matter is St. George Island Utility's
9 Request to File Late Rebuttal Testimony.

10 MR. PFEIFFER: Yes, sir. And there is Public
11 Counsel's Motion to Strike, which is, I suppose, the flip
12 side of the same motion.

13 CHAIRMAN DEASON: I'm sorry?

14 MR. PFEIFFER: Public Counsel has filed a Motion
15 to Strike the prefiled testimony that we filed a couple of
16 hours late. And I think that their motion and our motion
17 are essentially the flip side of one another. Ours is
18 asking that the testimony be allowed, their is asking that
19 it be stricken.

20 CHAIRMAN DEASON: I understand the testimony was
21 approximately two-and-a-half hours late filed?

22 MR. PFEIFFER: Yes, sir. We had -- there were
23 eight witnesses who have filed prefiled rebuttal testimony
24 on behalf of the Utility. Five of them were timely filed,
25 three of them were filed the next morning. Late during

1 the afternoon of July 7th, last Thursday, Mr. Brown called
2 me, he told me that he was having problems getting it
3 together, he asked that I call the attorneys in the case.
4 I did; I advised them that the testimony would be filed by
5 8:00 the next morning.

6 Mr. Brown can tell you about the efforts that
7 he made to get this testimony prepared in time and get
8 it in. It was all filed at about 10:30 in the morning.
9 We tried very hard, we failed by two-and-a-half hours.

10 I can't imagine that there can be a contention
11 that any party in this case has been prejudiced by that
12 sort of delay. Indeed, if they were chewing on our
13 testimony the night before, they had the witnesses --
14 the testimony of five witnesses exceeding several
15 hundred pages of testimony and exhibits that they could
16 have reviewed or could have been reviewing.

17 And, Your Honor, we're sorry. We're truly
18 sorry that we filed it late. And I think the cases are
19 legion that failure to meet time limits where prejudice
20 is not done to a party under circumstances where
21 prejudice to the party filing late would result simply
22 should be --

23 CHAIRMAN DEASON: Mr. McLean, are you -- I'm
24 sorry, Mr. Brown?

25 MR. BROWN: Could I be heard, just to explain

1 this a little further?

2 In an effort to save everybody money,
3 including the ratepayers, I decided to take on the
4 responsibility, my staff and I, the normal Utility
5 Company staff, of preparing all this testimony, or at
6 least having it typed when they brought it to my
7 office. But it became clear to me around the middle of
8 the afternoon last Thursday, because the printing people
9 told me they could not have this printed by 4:30, for us
10 to get it filed. I mean, some of it was -- one volume
11 was like this; I mean, literally hundreds and hundreds
12 of pages, and we did not anticipate that. Like, Ted
13 Biddy's was 100 pages, and some of the other people.

14 So I called Mr. Pfeiffer and asked him if he
15 could call the other attorneys and say, rather than put
16 this in the mail -- which normally we would do. We
17 would have mailed it Thursday night and stayed there.
18 They would have probably gotten it by UPS or something.
19 It couldn't have been mailed regular mail, they would
20 have gotten it this week. I said, "I'll have somebody
21 drive it to St. George Island, to Barbara Sanders."

22 I said, "The printer told me that it would not
23 be ready until 8:00 Thursday morning." Apparently,
24 there was some miscommunication between Mr. Pfeiffer and
25 myself about 8:00. When I said 8:00, I meant it would

1 be ready at the printers.

2 Now, I'd like to point out that we did file
3 five of the volumes, the ones that the printers had
4 ready. The others had to be printed during the night.
5 Rather than bring my staff in there at 5:30 -- these
6 people have been working 12 and 14 hours a day, we've
7 been there at 3:30 in the morning responding to Public
8 Counsel and Staff, we've worked many nights until
9 midnight. Rather than bring them in at 5:30, they came
10 in at the normal time last Friday.

11 And I had a meeting with the Utility Company
12 engineers and my operations manager early in the morning
13 so I personally had to work on other utility matters.
14 So I asked one of my people in the Utility Company to go
15 over and pick it up from the printing and take it to
16 Mr. Pfeiffer. And Mr. Pfeiffer had to assimilate it and
17 do a notice of filing and all of those things; and for
18 whatever reason, it didn't get filed until 10:00 or
19 10:30.

20 But I never meant to indicate that it would be
21 sitting on Mr. McLean's desk at 8:00. I just said the
22 printer would have it ready at 8:00. But there are so
23 many hours in the day that we work, and I never
24 anticipated that there would be hundreds and hundreds of
25 volumes that the printer couldn't have ready.

1 CHAIRMAN DEASON: Mr. McLean?

2 MR. McLEAN: Yes, sir. It was originally due on
3 the 7th. The Utility came to the Commission and said,
4 "Give us some more time, give us until the 15th," I
5 believe it was. And the Commission said, "No, we'll give
6 you until the 11th." I may be wrong on the dates but the
7 principle is correct.

8 They said you didn't give them as much time as
9 they wanted, you gave them more time -- you gave them
10 less time than they wanted but you did extended the
11 time. But what happens when you give them more time?
12 They don't perform. They miss the deadline.

13 I got a call which said to me, verbatim, "It
14 will be on your desk at 8:00 tomorrow morning if you
15 agree that we don't have to file several pieces by 5:00
16 today." Fine. I come into my office Friday morning,
17 it's not there. I could have predicted that and I never
18 should have made any agreement to the contrary.

19 I called Mr. Pfeiffer, and I said, "You did
20 not perform according to your half of the bargain. As
21 far as I'm concerned, it is off." The testimony was not
22 two-and-a-half hours late, it was about four or five
23 days late, although the Commission did permit it.

24 The reason for my objection is, every time I
25 agree to any sort of extension of any sort or give them

1 any slack at all, they don't perform when they agree to
2 do so. This lengthy excuse to explain two-and-a-half
3 hours delay, according to them, is what you're going to
4 hear a great deal of in the case.

5 I'm going to withdraw my objection to their
6 filing late, because I don't think two-and-a-half hours
7 is material. What is material is the constant failure
8 to perform as promised.

9 CHAIRMAN DEASON: Okay. The objection has been
10 withdrawn, therefore, it's moot, or it's been withdrawn,
11 and the ruling is to request the Motion to File Rebuttal
12 Testimony late. I believe that resolves all outstanding
13 motions --

14 MR. PFEIFFER: May we have just a moment,
15 please, sir?

16 CHAIRMAN DEASON: Yes, sir.

17 MR. BROWN: Your Honor, in light of that, I
18 mean, I'm of the opinion you ought to let it all in and,
19 you know, get to the merits, so we would withdraw our
20 objection to his late-filed testimony. We would, however,
21 like until Monday to file a response if that's appropriate.

22 MR. McLEAN: No objection.

23 MR. BROWN: We tried to stipulate to all this,
24 which would have saved considerable time, but I guess
25 Mr. McLean --

1 CHAIRMAN DEASON: Well, Mr. McLean just said he
2 didn't have any objection. So with that cooperation
3 between the parties then, it will be permissible for the
4 supplemental testimony of Ms. Dismukes to be filed and
5 we'll give leave to the Utility until Monday to respond to
6 the supplemental testimony.

7 MR. BROWN: Thank you, Your Honor.

8 CHAIRMAN DEASON: I believe then that does
9 address all outstanding motions.

10 MR. PIERSON: Mr. Chairman, I would like to make
11 one comment on this motion to allow late prefiled rebuttal
12 testimony?

13 CHAIRMAN DEASON: Yes.

14 MR. PIERSON: Paragraph 3, on Page 2, it says,
15 "SGIU is advised that the testimony would not be accepted
16 for filing." I'm not sure where that comes from, and I've
17 heard that before, but I'm informed by Records that --

18 MR. PFEIFFER: I think that somebody was goofing
19 with my runner and told him that they wouldn't accept it.
20 And they were laughing, which he took it to mean they were
21 scoffing at them. I think in retrospect, what it really
22 means is that they were laughing at the joke that they
23 were pulling on him.

24 So I'm sorry that I stated that but that's
25 what happened to him and that's what his understanding

1 of what was happening was. I think that the Clerk
2 was -- it's a Clerk's joke.

3 MR. PIERSON: Clerk humor. I understand.

4 (Laughter)

5 MR. PFEIFFER: It got his attention.

6 MR. PIERSON: Okay. Thank you.

7 CHAIRMAN DEASON: Ms. Sanders?

8 MS. SANDERS: Yes. Commissioner Deason, again,
9 my apologies.

10 On the issue of the use of confidential
11 material that was produced during discovery,
12 Commissioner Johnson had entered an order, a protective
13 order, granting confidential status to six categories of
14 documents; it's mostly income tax forms, et cetera.
15 Some of that was treated nonconfidential in the 1989
16 hearing, which was Docket No. -- the 87 docket number.
17 That's not so relevant to me as I need to be clear that
18 what Public Counsel has, I am allowed to see, even under
19 confidential treatment. And to notify you under this
20 prehearing conference order, Section II, that we will be
21 using some of those documents that are given
22 confidential treatment.

23 CHAIRMAN DEASON: So let me see if I'm clear.

24 There are some documents which have been given
25 confidential status and which you recognize have been

1 given confidential status, but you wish to utilize, and
2 you're giving notice of that at this time?

3 MS. SANDERS: That is correct, sir.

4 CHAIRMAN DEASON: Okay. But do you also believe
5 that there are some documents to which confidential status
6 have been given but which are basically already in the
7 public domain?

8 MS. SANDERS: That is correct.

9 CHAIRMAN DEASON: Mr. Pierson?

10 MR. PIERSON: Mr. Chairman, the order to which
11 Ms. Sanders refers is a protective order which protects
12 materials while they're in the possession of somebody
13 other than the Commission. The Commission does not
14 generally -- or the Prehearing Officer, for that matter,
15 does not necessarily have the documents before him or her
16 at the time of the ruling.

17 The protective orders are, I hate to
18 characterize it this way, but there is a lower threshold
19 than for granting confidential classification of
20 documents that are actually physically in the possession
21 of the Commission. So, therefore, I have no idea which
22 ones may have been denied confidential classification in
23 the last case. So I suppose we all need to get together
24 and figure that out.

25 CHAIRMAN DEASON: Mr. Pfeiffer, do you know

1 which documents --

2 MR. PFEIFFER: No, sir, I have no knowledge.

3 CHAIRMAN DEASON: I would just request that the
4 parties do try to identify what documents are in what
5 status; and to the extent there is agreement among the
6 parties, it will be treated according to the way the
7 parties view it if there is agreement. If there's not,
8 the only thing I know is that when the subject matter
9 comes up at the hearing, I would just wish it be
10 identified as a matter to which there is not an agreement
11 and the Commission will have to make a determination as to
12 how it's going to be treated.

13 MS. SANDERS: Thank you. And if there is a
14 dispute, we'll go ahead and comply with the procedure laid
15 out in II. It's simple enough to do that.

16 CHAIRMAN DEASON: Very well. I think that
17 probably would be the conservative way to approach it.

18 MS. SANDERS: Okay.

19 CHAIRMAN DEASON: Anything further at this time?

20 MR. PFEIFFER: Thank you for your patience.

21 CHAIRMAN DEASON: Thank you. I'll rap the gavel
22 here. Anything else? Hearing nothing, this prehearing
23 conference is adjourned.

24 (Thereupon, the hearing concluded at 11:10 a.m.)

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1 F L O R I D A)
2 COUNTY OF LEON)

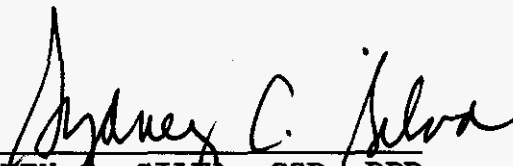
CERTIFICATE OF REPORTER

3 I, SYDNEY C. SILVA, CSR, RPR, Official Commission
4 Reporter,

5 DO HEREBY CERTIFY that the Prehearing Conference
6 in Docket No. 940109-WU, was heard by the Florida Public
7 Service Commission at the time and place herein stated;
8 it is further


9 CERTIFIED that I stenographically reported the
10 said proceedings; that the same has been transcribed
11 under my direct supervision, and that this transcript,
12 consisting of 60 pages, constitutes a true transcription
13 of my notes of said proceedings.

14 DATED this 14th day of July, 1994.

15 
16 SYDNEY C. SILVA, CSR, RPR
17 Official Commission Reporter
18 (904) 488-5981

19 STATE OF FLORIDA)
20 :
21 COUNTY OF LEON)

22 The foregoing certificate was acknowledged
23 before me this 14th day of July, 1994, by
24 SYDNEY C. SILVA, who is personally known to me.

25 
26 PATRICIA A. CHURCH
27 Notary Public - State of Florida
28 My Certificate No. CC 90785
29 Notary Public, State of Florida
30 My Commission Expires April 20, 1995
31 Bonded Thru Troy Fain - Insurance Inc.