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COPY

August 29, 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]

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' Posthearing Brief.

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

Sincerely,

Harold McLean
Associate Public Counsel

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Interim and Permanent Rate Increase in Franklin County, Florida by ST. GEORGE ISLAND UTILITY COMPANY, LTD.	)	DOCKET NO. 940109-WU Filed: August 29, 1994

CITIZENS' POSTHEARING BRIEF

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CITIZENS' POSTHEARING BRIEF

BASIC POSITION

*The evidence in this record shows critical lack of credibility of this Utility in every measurable respect. It lost or threw away essential records regarding original cost[1]. It filed admittedly inaccurate annual reports and seeks now to rely on their inaccuracies to impeach reliable evidence sponsored by the Citizens[2]. It obtained money in the last rate case on pretense of buying insurance, etc. and didn't use the money for that purpose[3]; its paid manager appears in a representative capacity on both sides of apparent contracts with and against the Utility, writings which themselves recorded alleged prior oral agreements[4]; it pawns the Utility at every opportunity, using the proceeds for purposes other than Utility purposes[5]; it has failed to pay its regulatory assessment fees[6]; it

[1] Order No. 21122, pp. 6-7

[2] Tr. 1420

[3] Tr. 328; Tr. 1597

[4] Tr. 520; Tr. 1344

[5] Tr. 1496, et. seq.

alleged a $3 million rate base to this Commission despite having characterized the sale which gave rise to that number as a sale "from us to us"[7]; it intentionally broke a stipulation with this Commission[8]; it seeks through Late-Filed Exhibit 43 to recover expenses which it specifically disavowed under oath[9]; there is a current docket before this Commission to revoke the Utility's operating authority[10]; and the Utility is perpetually at odds with every governmental agency with which it has contact. (North Florida Water Management District, Department of Environmental Protection, Internal Revenue Service, and last but not least, the Florida Public Service Commission)

In this case the Utility seeks pro-forma expenses under many of the same pretense as before with the same probable result: customers won't get what they are paying for. It brings tales of original cost money spent but not recorded. In each instance, the Utility's credibility--or lack thereof--must guide the Commission.

Given the critical lack of credibility established by this record, the Commission should resolve every reasonable doubt against the Utility as any reasonable fact-finder must do. The Citizens believe and urge this Commission to find that this Utility has not met its burden to show a need for rate relief.*

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[6] See: Docket No 920318-WU

[7] Tr. 1428

[8] Tr. 1525

[9] The Citizens have moved to strike late-filed Exhibit 43 which seeks, among other things to recover expenses related to the services allegedly furnished by TMB Associates. Such an expense is addressed and disavowed. (Tr. 1357)

[10] See: Docket No. 920782-WU

ISSUES AND POSITIONS

QUALITY OF SERVICE

ISSUE 1: Is the quality of service provided by St. George Island Utility Co., Ltd. satisfactory?

DISCUSSION:

The record shows that this Utility is constantly in trouble with the DEP. Customer testimony shows the practical side of the Utility's shortcomings: less than satisfactory quality of service. While the DEP cites, the customers endure.

Witness Pat Morrison dubbed the Utility "St. George Island Utility, a/k/a Brown Water Company." [Tr. 23.] Ms. Morrison illustrated her problems with a less than glamorous dish rack which she had recently purchased. There was endorsement of Ms. Morrison's view by the assembled customers' expression of applause. [Tr. 23.]

The testimony of Witness Gallio was self explanatory: "I have to tell you that I do not drink the water. The water makes me ill, and so I buy bottled water." [Tr. 27.] Witness Isaacs, who claimed to speak on behalf of customers who could not attend said,

> But our concern is that the quality of the water, if some of this increase is going to improve that quality, I think we'd probably be less concerned about it. But I think we'd still be concerned when you're looking at a doubling -- a virtual doubling of the cost of water in a short period of time. [Tr. 30.]

Witness Gherardi lent an international flavor to her appraisal of the water quality at St. George's Island by relating her experiences in Caracas, Venezuela where she often heard, "¡No hay agua!" (there is no water) [Tr. 32.] Ms. Gherardi characterized SGU as a "banana republic water company" apparently from her experience of the loss of water (agua) while in her shower. [Tr. 33.] She suggested a parallel between her Caracas and St. George experiences as follows:

> So, you see, in spite of my serious vow to the contrary, my situation on St. George Island, Florida, the United States of America, the last world superpower, is remarkably similar to my situation in Caracas, Venezuela, a South American third-world country. I'm still being caught in the shower when the water goes off.
>
> In Caracas I filtered my water to take out the sediments, the taste and the bad odors. On St. George Island I filter my water to take out the sediments, the taste and the bad odors. In Caracas I kept a large garbage can full of water in case the water went off. In my house on St. George Island, I have as two 5-gallon buckets full of water in case the water goes off.
>
> The difference in the two situations is that in Caracas I paid my water bill in devalued funny money, and here I pay with hard U. S. currency.

My Caracas water did not leave the mineral deposits that the St. George Island Utility water leaves on my plumbing. I have bought every product I can find to try to take away the water deposits from my plumbing fixtures and it's a major operation when we try to change a faucet washer because the parts have been welded together by the deposits. At least in Caracas I could use the excuse for the water outage saying, "Well, you know, after all, this is a third-world country." But here in the best country of the world, there is absolutely no excuse for granting a rate increase to this third-world banana republic water company on St. George Island. Thank you. [Tr. 34.]

The testimony of customer witnesses show the real-world consequences of the many DEP violations by this Utility to which Ms. Dismukes referred in her testimony [Tr. 643.], many of which are detailed in Exhibits 34 and 35. The quality of service provided by this Utility is less than satisfactory.

RATE BASE

ISSUE 2: Has St. George accurately stated the original cost of the water system?

DISCUSSION:

No. Contemporaneous, objective evidence in this record shows the original cost of this system as of 12/31/1979 to be $830,145; and shows the additions to plant from that time to 12/31/1987 to be $543,705. An adjustment to test year rate base of $645,038 is required. The extreme reservations this Commission had in SGU's previous rate case concerning original cost are confirmed as valid in this record.

DISCUSSION:

The gravamen of the Utility's case on this point holds that the Commission decided this issue in the last case and should not consider it in the instant case. [Tr. 1312.] It is true that the Commission did permit a surrogate for original cost in the last case, but the Commission did so with extraordinary, articulated reservation:

> The appropriate method to determine the original cost of a system is by analysis of the utility's books and records and the original source documentation in support thereof. During the audit of SGI, the Staff auditor was informed that the original records had been lost, thrown away or had simply disappeared. Since SGI could not locate its books and records and supporting documentation, it submitted instead an original cost study in support of its proposed rate base.
>
> Given the size of SGI, the fact that its owner is also a developer and that it has consistently remained under the same ownership, *its failure to maintain original source documentation for review by this Commission or any other governmental agency is unacceptable.* We cannot help but wonder how the records were available for independent accounting firms to perform annual audits and consistently issue unqualified opinions, when the same records are unavailable for this proceeding.

In the absence of original source documentation, there appear to be two options available to determine the original cost of SGI's system. The first would be for us to conclude that, due to the suspect circumstances surrounding the absence of the records, SGI has not met its burden to prove its investment. Accordingly, we could conclude that SGI has no investment in utility plant until such time as it provides original source documentation. This solution does not, however, appear to be fair and just since the record does indicate that the utility has some level of investment in the system.

The second option is for us to accept SGI's original cost study, subject to any adjustments that we determine to be appropriate. This appears to be the only reasonable approach under the circumstances. However, although we will use SGI's original cost study, we stress that our action should not be construed to imply that a utility can justify investment unsupported by original source documentation with an original cost study. *Further, if at any time in the future, evidence is produced which reflects that our analysis of SGI's investment is incorrect, we may, of course, readdress the issue of SGI's level of investment.* (Order 21122, pp. 6-7; italics added)

This record supports the first option: the Commission could, upon this record, conclude that, due to the suspect circumstances surrounding the absence of the records,

SGI has not met its burden to prove its investment. Accordingly, the Commission could conclude that SGI has no investment in Utility plant until such time as it provides original source documentation.

This record, however, also addresses the second option in that the Citizens have assembled several pieces of the original cost puzzle which suggest a substantially lesser original cost. Each of these pieces was either authored by the Utility or prepared at its direction. Much of it was submitted to the Commission by the Utility with every expectation that the Commission would rely upon it. There is no need to now rely upon a flawed original cost study prepared years after the system was built: there is contemporaneously prepared evidence which shows original cost.

The 1979 Audited financial statement: Exhibit #20

Ms. Dismukes relied on exhibit 20 in her opinion that the original cost of the assets transferred from Leisure Properties, Ltd. (Leisure) is $830,145. Exhibit 20 is an audited, unqualified financial statement prepared by a Certified Public Accountant. It was prepared at the instance of the Utility. [Tr. 1442.] The financial statement in note 4, p. 14 of the exhibit includes an explanation as to why the statement shows the water Utility assets on the books of Leisure despite the sale of the assets to SGU. Both Mr. Brown and Ms. Withers attempted to explain away the import of this audited financial statement by references to "hard" costs and "soft" costs. [Tr. 1561.] The theory of this explanation relies on some notion that while a CPA might somehow not include "soft" costs on a financial statement, the Commission would recognize these "soft" costs for ratemaking

purposes. [Tr. 1583.] Included in this explanation is the notion that the CPA who prepared the financial statement was auditing Leisure as a land development company, not as a Utility. [Tr. 1583.] This somehow, witness Withers says, leads to a conclusion that the CPA missed the "soft" costs.

Such an interpretation of an audited financial statement is patently absurd. This record shows that such an interpretation was fabricated for purposes of the hearing. Such a theory is noticeably absent from Ms. Withers', Mr. Brown's, and Mr. Seidman's rebuttal testimony.

In the context of having lost or misplaced all original source documentation, the Utility seeks to impeach its own audited financial statement by identifying investment missed by the CPA firm which prepared the statement. Utility witness Withers testified that the financial statement would not have included "soft" costs. Ms. Withers identified several "soft" costs: architectural, engineering feasibility studies, DRI costs, carrying costs property taxes interest, overhead, construction, legal fees, supervision, general office salaries, and "that type of thing". Without consideration of "that type of thing" the Citizens submit that a CPA could not have certified that the financial statement "present(s) fairly the financial position of Leisure Properties , Ltd." Moreover, it must be remembered that the task here is to determine original cost. Even if the Commission were to join Ms. Withers' bizarre understanding of an unqualified financial statement, the Commission is left only with an insinuation that expenses for "that type of thing" were incurred. There is no evidence that Leisure incurred architectural expenses in the construction of its water system. There is no evidence that Leisure incurred any of these

expenses.

When questioned by Chairman Deason as to how the "soft" costs were booked Ms. Withers was at a total loss, other than to say the Bishop report is "just too low". [Tr. 1576.] Utility Witness Coloney, whose report some ten years later presumably captured the "soft" costs attributed (under questioning from Ms. Sanders) the undocumented additions to good fairies but later conceded that it might have been developers [Tr. 216.].

There is evidence that Leisure invested $830,145. It is in the form of exhibit 20 which is a unqualified financial statement by a CPA that Leisure's investment in the Utility is $830,145. There is no discussion of "soft" costs and there is no discussion of "hard" costs because that nebulous language is not the language of accounting. There is reliance upon generally accepted accounting principles to ensure that the entire financial statement fairly presents the financial position of the firm. This reliance on generally accepted accounting principles ensures that the investment in the water system is accurately presented. There is neither discussion nor confusion regarding the supposed difference between the Utility business and development business. The statement meets that issue head on:

> Due to the continuing involvement of Leisure in the operation of the Utility system as General Partner, and because the collection of the balance of the sales price is largely dependent upon future positive case flow from the Utility's operation, *the transaction has not been recorded as a sale for financial reporting purposes.* (italics added) [Exhibit 20, p.14.]

The statement furnishes its own credibility: it was authorized by the Utility, prepared by

a CPA firm, and holds forth the standard language of unqualified, audited financial statements relied upon by lenders and investors world wide. Moreover, it is generously corroborated in this record:

When Mr. Brown pressed his suit against Franklin County, Florida on an equitable estoppel theory, all his incentives were to state every bit of reliance which supported his theory. Mr. Brown's case against the County is silent as to his alleged "soft" costs. Mr. Brown asserted the Bishop Study [Exhibit 6.] as the extent of his reliance upon the permits issued by the County. If there were other costs, this would have been a good time to raise them. They were not raised. Mr. Brown claims that he didn't say anything about these other costs, because they would have been irrelevant since they allegedly occurred after his circuit court filing. Would that Mr. Brown's reverence for relevance been observed in this record. Even a causal review of this record shows Mr. Brown's contempt for notions of relevance. Mr. Brown does not cower in the company of irrelevant evidence. His reluctance to introduce what he now says is irrelevant evidence in that record must be measured by his activity in this record. It is also of note that on those occasions when Mr. Brown offered the extent of his reliance, neither the question nor Mr. Brown's answer was limited to any time period. [Exhibit 64.] It is also instructive that the appellate court decision reviewing a summary judgement rendered in the circuit court case considered actions taken by Franklin County as late as July 1, 1981. See Franklin County v. Leisure Properties, Ltd, 430 So.2d 475, 479.

When it was Mr. Brown's time to come forward in 1981 with his bundle of reliance, he presented the Bishop Study, he presented his own testimony and he

presented Exhibit 75, the Sayers appraisal. He said nothing of the various theories urged by himself or by Ms. Withers by which they seek to show alleged infirmities of the audited financial statement, the Bishop Study, the Sayers appraisal, or of any other matter. He said that he had built a water system in reliance on the County's permits and that the replacement cost of that system as of February, 1981 was $908,000. If the Bishop study was stale when he offered it, Mr. Brown didn't say so when it would have been to his advantage to say so.

Additional corroboration of the unqualified, audited financial statement is provided by Leisure's tax returns for the years 1978 and 1979 [Exhibits 22 and 21, respectively.] in both instances Leisure reported investments consistent with the financial statement and inconsistent with any notion of missing "soft" costs.

Independent, contemporaneous, objective, and reliable evidence shows the original cost of this water system at the time of sale from Leisure to St. George Island Utility Company, Ltd. to be $830,145. The Citizens turn now to improvements by SGU to the system it bought.

St. George Island Utility Company, Ltd.'s annual reports

The annual reports--relevant pages of which appear in exhibit 65--are what the Utility told the Commission their additions were on a yearly basis, from 1979 to the end of 1987. Those additions amount in the aggregate to $539,735. The Utility which either lost or threw away original cost documentation must now disavow its own annual reports, despite Mr. Brown's certifying in writing that each annual report was true, correct, and complete for the period they represent. Mr. Brown now says "I don't think

these reports are true, accurate, and complete." [Tr. 1420.]--because his records were not good. [Tr. 1422.] Mr. Brown, in this record, attempts to assert the Utility's own shortcomings as a defense to being bound by what he told the Commission over the space of nine years.

There is a compelling policy reason to hold this Utility to its annual reports. If the Commission declines to bind this Utility by its own certified statements to the Commission, the Commission will doom the reliability of annual reports it receives in general. Many affected parties--in addition to the Commission staff--rely upon Utility annual reports for a variety of purposes, not the least of which is earnings surveillance. If this Utility or any other Utility is permitted to distance itself from its annual reports--particularly on the basis of its own slipshod record keeping--annual reports will loose all credibility.

Moreover, the annual reports are reliable in their own right. Each is a contemporaneous recording of investment when made, submitted on a periodic basis. Despite the Utility's efforts to shove them away, they are the certified statements made by the Utility manager-in-fact as to the financial position of the Utility, including investment during each year. The annual reports were not prepared in contemplation of a rate case: the Utility's criticism of the annual reports was. The annual reports are consistent with the Utility's books: the criticism of the annual reports is not.

Moreover, the additions to plant shown in the annual reports are accepted as true by the Utility, so long as the number to which they are added is one the Utility likes. In the Withers affidavit [Exhibit 42.] Ms. Withers accepts the additions shown in the annual

reports only where the additions are added to $2.2 million rather than $830,145. Ms. Withers says: "...from 1979 through December 1987, the total additions to the system by St. George Island Utility Company, Ltd. were $612,948". [Exhibit 42, p. 3.] There is no discussion in this affidavit indicating that the $612,948 (which was taken from the annual reports. see Exhibit 42, p.7) was inaccurate in any way. Only Ms. Withers and Mr. Brown believe that the quantification of the additions depends upon the reason the quantification is sought. Unlike Mr. Brown, Ms. Withers urged the annual report numbers as true, albeit, so long as they were used for a purpose she liked.

This Commission should use the additions from annual reports, from the books upon which they are based, and from the Withers affidavit to establish the additional investment in plant from the time St. George Island Utility Company, Ltd. purchased the water assets from Leisure. Witness Dismukes's reliance on the annual report numbers was reasonable at the time of her testimony: the Commission's reliance on the same numbers is compelled by sound policy and by this record.

The Utility's Evidence

As it did in the last case, the Utility relies on an original cost study prepared by Mr. Coloney. [Exhibit 8.] Mr. Coloney's 1988 study was shown in cross examination to be at considerable variance with the additions and the rate of additions shown in the Utility's annual reports. The timing of additions is critical to an original cost study because the age of an asset determines the extent to which its present day cost is discounted.

There is a blatant defect in the Coloney study, however. Even if the Coloney study is accepted as absolutely accurate, the Coloney report does not even purport to say who

paid for the assets found in the ground. Mr. Brown's testimony supported by the 1978 William Bishop appraisal is a statement that Leisure paid for the original system. The same is true of the 1978 and 1979 Leisure tax returns. SGU's books and annual reports show that SGU paid for the additions therein reflected. [Exhibit 42, Withers affidavit.] However, although Mr. Coloney's study may correctly identify assets in the ground and the likely price, it is at wide variance with the annual reports and the books of the Company. The explanation, according to Mr. Coloney, lies either with fairies or with developers. There is no evidence in this record which explains this discrepancy. Mr. Colony said, referring to the annual reports:

> Q (By Ms. Sanders) You have no explanation for what the Utility reported on its annual report?
>
> A This is the first time I have seen those figures and I have no explanation; I have no idea. [Tr. 215.]

In summary, Mr. Coloney--friend of Mr. Brown [Tr. 187.]--furnishes an estimate of original cost. The estimate incorrectly identifies the time at which assets were placed. [Tr. 200.] Most importantly, it never shows that the investment it purports to identify is the investment of this Utility. Its reliability pales in comparison to the Bishop appraisal, the audited financial statement, the 1978 and 1979 tax returns, the annual reports, the books of the Company and the Withers affidavit. The Coloney study was prepared in the prosecution of a rate case. None of the other documents were.

Lastly, as it did in the last case, the Utility relies on its settlement with the Internal

Revenue Service as a statement by the IRS of the Utility's investment in the system. The settlement with the IRS is meaningless in the context of this proceeding. The IRS audited the returns of Leisure and of the Utility for several years. [Tr. 1543.] Among the several concerns of the IRS was the depreciable tax basis of the Utility. [Tr. 1543.] Ms. Dismukes correctly rejected this settlement for a simple reason: depreciated tax basis doesn't have anything to do with original cost. Had the matter been litigated with the IRS to the "nth" degree, this would still be so. It is particularly so where the depreciated tax basis is derived by *settlement* with the taxpayer. Even more so when the settlement encompassed a number of disputed issues. [Tr. 1418.]

The IRS never took any position as to the original cost of the plant at the time it was first dedicated to public service. The "officially determined depreciable tax basis" to which Witness Withers referred in her testimony [Tr. 1544.] is not a determination of original cost upon which this Commission may permit a reasonable return. Moreover, the "officially determined depreciable tax basis" is a number for which the IRS was willing to settle. IRS reasons for settlement don't appear in this or any other record. Finally, the IRS settlement should be viewed in the light of common sense: the settlement was about half way between the position taken by the taxpayer and the service. To attach non-tax significance to the $2.2 million settlement is erroneous.

The "officially determined depreciable tax basis" is simply not probative of any issue in this case and should be ignored by the Commission.

When, in 1987, a CPA was called upon to prepare a financial statement, it was necessary to assign a value to the water assets. The CPA's focus at this point was not to

establish an original cost upon which a reasonable rate of return could be based, it was to ascertain a value for the assets to be placed in the financial statement. The task was complicated by a less than arm's length sale of the water Utility assets and the absence of objective evidence of value. The CPA's use of the tax settlement may have been a reasonable indicator of fair market value or replacement value. But it was not then and should not be used now to establish the original cost of the assets at the time they were first dedicated to public service.

The Commission's accepting Ms. Dismukes opinion as to original cost would not work an undue hardship on this Utility. It must be remembered that by stipulation, used and useful for this Utility will change from 18% to approximately 85%.

Summary

The Utility would have this Commission believe and find that half of their investment in its plant as of the last rate case was lost to "soft" costs and to inadequate record keeping. That is not a credible explanation. It is vastly more credible to believe that an unqualified financial statement at the time of the transfer from Leisure to St. George Island Utility Company, Ltd., taken with the Utility's own statements of additions to the system, correctly reflect the Utility's investment in the system.

Lastly, it must be remembered that this company could have brought original source documentation to the Commission had the company not thrown away or lost it. The bulk of this hearing, the bulk of Commission resources on this case, the bulk of the Citizens' efforts on this case, and the bulk of Utility resources spent on this case--all of which will ultimately be born by ratepayers--was occasioned by unexplained throwing

away or loss of essential records.

Having lost or thrown away records, the Utility is now before the Commission denying an audited financial statement which they ordered, and impeaching their own annual reports, each of which Mr. Brown certified as true, accurate, and complete.

In the last case the Commission believed that their first option--to deny the Utility any investment--was not fair and just. This record shows a Utility which lost or threw away essential records, which draws bogus significance to "hard" costs and "soft" costs, and which seeks to capitalize on their own slipshod records to impeach their annual reports.

It is squarely within the realm of this Commission's discretion to find that this Utility has not carried its burden to show any investment in Utility plant up to the end of 1987. This finding is not only fair and just, it is richly deserved.

ISSUE 3: Should the Utility's pro forma adjustment of $21,000 for engineering design fees, as stated in Audit Exception No. 14, be removed?

DISCUSSION

Yes. The Utility has failed to effectively refute Staff witness Gaffney's recommendation that this proforma adjustment is inappropriate because it had previously been recorded as either an expense or capitalized. [Exhibit 27, p. 30.]

The Utility has the burden to provide the documentation and evidence that these fees were unrecorded. No such evidence was provided. Accordingly, the proforma adjustment should be disallowed.

ISSUE 5: Is an adjustment necessary to reflect the use of office furniture and equipment by utility affiliates?

DISCUSSION

Yes. 10% of the investment in certain office equipment should be allocated to nonutility affiliates, resulting in a reduction of $1,026 to general plant. Accumulated depreciation should be correspondingly reduced by $80 and depreciation expense should be decreased by $68. [Tr. 633, Exhibit 18, Schedule 25.] For a more detailed discussion on this subject refer to issue 13.

ISSUE 6: Should adjustments be made to plant and contributions in aid of construction (CIAC)?

DISCUSSION

*Yes. Two adjustments are necessary. First, if the Commission does not accept adjustments to the test year based upon 1993 expenses, revenues, and investment, then $44,400 of CIAC received in 1991, but not booked until 1993 should be added to the CIAC included in the 1992 rate base. Second, $65,000 in CIAC from the St. George Island Homeowners Association should be added to CIAC included in rate base. *

Concerning the $44,400 CIAC adjustment, the Company acknowledged its agreement with the adjustment proposed by the Citizens' witness Dismukes. [Tr. 998, 1031-33 and 688-89.] Accordingly, the Commission should increase the amount of CIAC included in the Company's proposed 1992 test year rate base by $44,400. If the Commission adopts the recommendation of the Citizens' witness Dismukes to make

adjustments for the 1993 level of revenue, expenses, and investment, then no adjustment is necessary, since the $44,400 was booked by the Company in 1993 and accounted for by Ms. Dismukes in her growth adjusted rate base. [Tr. 689.]

Both Ms. Dismukes and Ms. Gaffney agree on the treatment of $65,000 given to Mr. Brown by the St. George Island Homeowners Association--the associated dollars should be considered CIAC and used to reduce rate base. [Tr. 686-688 and Exhibit 27, p. 35.]

The Utility on the other hand wants the Commission to believe that these dollars, while given to Mr. Brown and his affiliates for the sole purpose of making improvements to the water system, should not be treated as CIAC because the monies were allegedly "loaned or advanced" to the Utility through one of Mr. Brown's many affiliates. [Exhibit 63, Tr. 995-96.] Yet, when questioned about a similar arrangement between a utility and a parent company where funds were advanced to the parent company for purposes of building utility assets, Mr. Seidman agreed that such funds would be considered CIAC. [Tr. 1016-17.] Otherwise, as Mr. Seidman agreed, all a utility would need to do is set up an organizational structure to run monies through the parent organization so that such funds would not be considered a contribution. [Tr. 1017.]

Mr. Seidman, in his rebuttal testimony, offered to treat $2,500 of this $65,000 as an advance for construction. The $2,500 figure is one-half of $5,000 which was to have been received by the Company in 1992. Mr. Seidman, however, derived this information from the settlement agreement, not the actual facts of when Mr. Brown received the money. Mr. Seidman never consulted Mr. Brown to find out when the money was actually

received. [Tr. 1029.] Exhibit 32, in fact, suggests that the funds may have been received during the 1992 test year. The Utility offered no competent evidence supporting its contention that the other $60,000 of funds were not received during the test year. The settlement agreement used by Mr. Seidman to draw his conclusion was not accurate as evidenced by Exhibit 32 which shows that Mr. Brown received these funds on or before January 25, 1993.

The Utility's theory relies on the notion that the Utility was not a party to the lawsuit. The Utility did not explain how it is then, that the Association had an enforceable right to compel performance under the agreement. Also unexplained is how the agreement includes a release by the utility of any cause of action against the Association. [Tr. 1368]

Accordingly, the Commission should make an adjustment to the Company's rate base to include $65,000 as CIAC. In the alternative, the Commission should treat these funds as either an advance for construction or as cost free capital. The Commission should not ignore these funds and given them no ratemaking treatment.

ISSUE 7: Does the utility's case in chief present an appropriate matching of rate base, on the one hand, with revenues and expenses, on the other?

DISCUSSION

*No. The Utility's filing includes many adjustments to the test year (1992) reflecting expenses of 1993 and 1994. If the Commission accepts these adjustments, then it should consistently adjust the Company's rate base to at least a 1993 level. A negative adjustment

to rate base of $190,062 is appropriate. [Exhibit 18, Schedule 25.] Refer to issue 30 for a more detailed discussion on this subject.*

COST OF CAPITAL

ISSUE 9: What capital structure should be used for ratemaking purposes?

DISCUSSION

Two adjustments to the capital structure are appropriate: 1) any and all debt associated with Ms. Melton should be removed from the capital structure; and 2) short-term debt should only include debt which has not been paid off by the Company.

The Advertising Judgment

The Citizens' testimony on this subject was unrefuted by the Company. Neither Mr. Brown or Mr. Seidman offered testimony rebutting the direct testimony of Ms. Dismukes. As explained by the Citizens' witness Dismukes, a judgment owned by Ms. Melton, was included in the Company's capital structure. This debt however, was not related to Utility business, but arose due to Leisure Properties failure to pay for advertising services. As such, this debt should be removed from the Company's test year capital structure. Accordingly, the Commission should remove from the Company's proposed capital structure $85,865 of nonutility debt owed to Ms. Melton. [Tr. 689-92.]

Short-term debt

St. George 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. Again, the

testimony on this subject offered by witness Dismukes was unrebutted. Accordingly, the Commission should only include in the Company's capital structure short-term debt that currently exists on the Company's books. [Tr. 692.]

ISSUE 10: What is the weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure used for ratemaking purposes?

DISCUSSION

The appropriate overall cost of capital is 8.07%. [Tr. 692-93 and Exhibit 18, Schedule 24.]

OPERATING INCOME

ISSUE 11: Should the numerous pro forma adjustments to the test year in this case be contrasted with those requested in the immediately prior, dismissed rate case?

DISCUSSION

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 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. As further evidence of the veracity of the Company's proposed proforma adjustments, the Commission should refer to Exhibit 4, where Mr. Brown gave instructions to his accountant not to record an entry on the Utility books, because Mr. Brown did not want to make the subject of the state park an issue in the rate case.

ISSUE 12: Are the expenses claimed by St. George comparable to those experienced by other Class B water utilities under Commission jurisdiction and, if not, are any adjustments appropriate?

DISCUSSION

No. The Utility's expenses are alarmingly higher than those of other Class B water utilities under the Commission's jurisdiction.

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

ISSUE 13: Should test year expenses be adjusted to reflect an additional allocation of expenses to utility affiliates?

DISCUSSION

Yes. In all, $10,687 in expenses should be allocated to nonutility affiliates.

At least eight affiliates operate from the same address and the same offices as the Utility. The administrative staff of SGU and Mr. Brown assist with the management and operation of Mr. Brown's other companies. For example, the Utility receptionist and other support staff answer the phone for SGU as well as other companies. The Utility administrative staff runs errands for Mr. Brown and his other companies, they make copies, and send and receive faxes for Mr. Brown's other companies. [Tr. 630.] 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. [Tr. 631.] Because of the lack of records, the Commission is left to infer from what evidence they can find the extent to which Utility resources are shared with the affiliates. While the Utility invites the Commission to assume that resources are dedicated exclusively to Utility proposes, the Citizens believe the better practice is to resolve doubt against the party who brings doubt to the process.

The Company, with rare exception, would have the Company's ratepayers foot the entire bill for services provided to Mr. Brown and his nonutility affiliates by Utility personnel. Mr. Seidman was critical of Ms. Dismukes' allocation of 10% of common costs to Mr. Brown's nonutility businesses. Mr. Seidman, however, offered no alternative. Instead, Mr. Seidman suggests that such services are provided as a courtesy. [Tr. 1042.]

Utility witnesses Seidman and Chase were both forced to admit that even though services were provided to these other nonutility entities, no time records or any other records were maintained which would show how much time was spent on Utility business versus nonutility business. [Tr. 1043-44.]

A very similar situation to this one was recently addressed by the Commission in Docket No. 910637. In that case, Order No. PSC-93-0295-FOF-WS, the Commission found that the utility in question, Mad Hatter Utility, Inc., "did not keep, and therefore could not produce, time records in support of its position." That position being that no common costs should be allocated to a sister company. The Commission accordingly allocated 3.64% of the utility's salaries to the sister company. [Exhibit 33.] In that proceeding, the allocation was based upon the number of customers between the two companies. No such objective allocation basis is available in the instant proceeding. Instead, a subjective allocation must be made.

Ms. Dismukes used a conservative 10% allocation factor. As stated in her testimony, the Commission has several options, since the Company provided no evidence of its 0% assertion. For example, the Commission could use a 50%/50% sharing, as this is how the Company chose to split its electric bill. Or, the Commission could use a sharing of 75% to the Utility and 25% to the other affiliates, as was done with Ms. Chase's salary. Ms. Dismukes did not choose either of these more favorable allocations, but instead used a lower 10% allocation for most common costs as depicted on Exhibit 18, Schedule 5. With respect to Ms. Chase's salary, the Citizens accepted the distribution offered by the Utility, but recommended that the health benefits of Ms. Chase be allocated similarly to Mr.

Brown's nonutility companies. [Exhibit 18, Schedule 5 and Tr. 632.] Mr. Seidman agreed with this allocation. [Tr. 929.]

With respect to office rent, the Citizens recommend that 50% of the office rent/lease payment be charged to Mr. Brown's nonutility companies. [Tr. 632-33.] The 50/50 allocation is based upon the square footage occupied by the Utility personnel versus the square footage used for Mr. Brown's law office and other affiliates. This 50/50 allocation is consistent with the Utility's allocation of the associated electricity expense. [Tr. 629, 631-32.]

The lease payment is made up of $635 for rent, $150 for ad valorem taxes, and $135 for association dues, for a total of $900 per month, or $10,800 a year. [Tr. 630 and 632.] The Utility argues that allocating only 50% of this lease cost to the utility is not appropriate because the result would produce a rate per square foot less than what is currently available in the rental market. [Tr. 930.] Mr. Seidman's suggestion that the effective rate produced by the recommendation of Ms. Dismukes was so low that it would encourage Armada Bay to look for another tenant is ludicrous. In fact, under cross-examination, Mr. Seidman admitted that he did not know if his suggestion was even realistic. [Tr. 1038.] Clearly its not, since the lessor, Armada Bay Company, is for all intents and purposes the same as the Utility. Mr. Seidman's suggestion that the cost to the Utility is reasonable, because of his prevailing market rate comparison, should be rejected. It is the responsibility of competent management to seek the lowest rental rate possible--not the prevailing market rate. Furthermore, the prevailing market rate at the time the lease agreement was signed may not be the same as the current market.

The Utility also suggested Ms. Dismukes recommendation was not appropriate because it did not take into consideration the $5,000 down payment made on the lease/purchase option. However, as Ms. Dismukes testified, the effect of down payment would be to raise the rental expense charged to the Utility by $6.00 per month. [Tr. 731.] Adding this $6.00 a month to the lease payment recommended to be charged to the Utility would produce an adjustment to the Utility's expenses of $3,528[11]. [Exhibit 18, Schedule 5.]

ISSUE 14: Should employee salaries and wages be reduced?

DISCUSSION

Yes. Salaries and wages should be reduced by $15,948.

In December of 1993, employees of St. George received an average wage increase of 26%. As depicted on Schedule 7 of Exhibit 18, these increases ranged from 5% for Mr. Shiver to 51% for Ms. Chase. [Tr. 637.] 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%. [Ibid.] During cross-examination, Ms. Dismukes agreed that due to the high level of customer satisfaction with Mr. Garrett's performance, an increase in excess of 5% was justified.

However, no similar praises were afforded the other two Utility employees who

[11] $3,600 - $72 = $3,528.

received pay increases in excess of 5%. Accordingly, given today's economic environment--low inflation and tight job market, it is not necessary to award the Company's employees with substantial pay increases. This is even more true given the increased benefits the Utility proposes to offer--$300 per month payment for health insurance and a pension plan. The Commission should accordingly adopt the recommendation of Ms. Dismukes and hold the pay increases for these two employees to 5%. As depicted on Schedule 7 of Exhibit 18, this would reduced test year salaries and wages by $7,628.

The Utility also requested 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 through May 1994. [Tr. 725.] If, as the Utility asserts, this field assistant is needed on a full-time basis, why wasn't he hired to work full-time in January 1994? The Company never answered this question. Also, prior to the rate case, the Company operated with 1.75 to 2.0 persons in the field. [Tr. 638.] There has not been substantial growth on the system that would warrant the addition of a full-time field assistant. The Citizens do not believe that the Company has adequately demonstrated the need for a second full-time field assistant. Accordingly, the Commission should adopt the recommendation of The Citizens' witness and reduce test year expenses by $8,320. [Exhibit 18, Schedule 7.]

ISSUE 15: Should pension and benefits be reduced?

DISCUSSION

Yes. The Company's requested test year expenses should be reduced by $16,956.

Health benefits ($300 cash per month) are requested by the Utility for all employees of the Utility and for Mr. Brown. Mr. Brown is not an employee of the Utility--he is an employee of Armada Bay Company to which the Utility pays $48,000/yr for management services. Accordingly, this expense is more properly borne by Armada Bay Company, not the Utility. In addition, it is unusual for a Utility of this size to pay health benefits to hourly and part-time employees. Accordingly, the Commission should only grant the expense for the health benefit for the Company's four full-time salaried employees. Also, for Ms. Chase, because her time is allocated 25% to nonutility affiliates, her health benefits should be similarly allocated. [Tr. 645-46.] Each of these recommendations were agreed to by Mr. Seidman. [Tr. 949.]

The Utility is also requesting $6,156 for a pension plan. The pension was effective in January of 1994. This plan is suspect for several reasons. In sum, it appears to have been fashioned in contemplation of this rate application, it includes no requirement that St. George continue whatever program there is, and finally, if it were seriously undertaken, it might have been explained to employees such that they could remember its substance. [Tr. 647-49.] In addition to these problems, the Commission should be gravely concerned with allowing the Company to collect increased rates for a nonessential expense. While the Citizens do not dispute the fact that a pension plan is a nice benefit for employees, the Commission has no assurance that this money, if granted, will be used for its intended purpose. As Mr. Seidman was forced to admit, in the Company's last rate case, the Commission granted the Company $16,813 for pensions and benefits. [Exhibit 1, p. 44.] The Company, however, never utilized these funds for this purpose. [Tr. 79.]

Mr. Brown provided little assurance that these expenses would be paid in the future. [Tr. 1527-28.] If the Commission decides to grant the Company rates to cover this expense, the Citizens urge the Commission to do so only if the funds are properly escrowed and distributed solely for the purpose of funding the pension plan. In the alternative, the Commission can require the Company to file invoices and canceled checks showing payment for the expense. If the Utility fails to make these payments, or provide the necessary documentation, the Commission should initiate a show cause order to reduce rates accordingly.

ISSUE 16: Should an adjustment be made to reduce engineering contractual services by $1,959 as suggested in Audit Disclosure No. 6?

DISCUSSION

Yes. The Company's proforma adjustment for engineering services should be reduced by $1,959.

The Company did not demonstrate the needed for $6,000 of contractual engineering services. Moreover, the fees charged by Mr. Coloney, $200.00 per hour, are excessive. In addition, Mr. Brown indicated that he intended to use the services of Mr. Les Thomas in the future, whose hourly rate of $75.00 per hour is substantially less than that of Mr. Coloney. Accordingly, the Company's going forward level of contractual engineering fees should not exceed those incurred during the test year.

ISSUE 17: Should any adjustment be made to contractual services- accounting?

DISCUSSION

Yes. The Utility has included in its application a $6,000/yr retainer for accountant Barbara Withers. The Company has not adequately demonstrated the need for these services. Furthermore, any services provided are not properly borne by ratepayers.

Ms. Withers, according to St. George, is to be consulted for tax advice and complicated or more sophisticated accounting matters. The $6,000 consulting fee requested by the Utility is riddled with problems.

First, Ms. Withers was allegedly retained by the Utility in January of 1993, however the retainer was not prepared until over a year later in February of 1994. Not surprising, the retainer agreement was not dated. [Tr. 350, 650 and Exhibit 9.]

Second, Ms. Withers did not bill for services allegedly performed during 1992 (the test year) or 1993. [Tr. 650 and Exhibit 10.] In fact, Exhibit 10 shows that Ms. Withers had not performed any work for the Utility since February 1991. The Citizens find it hard to believe that both Ms. Withers and Mr. Brown would have lost subsequent bills for services rendered.

Third, although the retainer agreement with Ms. Withers was supposed to be effective January 1, 1993, the Utility did not pay Ms. Withers for this retainer until a year later on January 30, 1994 and then it only paid one-half. [Tr. 650 and Exhibit 9.]

Fourth, there is evidence to suggest that Ms. Withers' retainer agreement will be used for purposes of paying old outstanding bills. [Tr. 650-51.] Mr. Brown testified that he owned Ms. Withers quite a bit of money. [Tr. 452.]

Fifth, services rendered in 1994 were for two purposes only--the rate case (which

should not be considered part of the retainer) and tax advice dealing with restructuring the Utility. [Exhibit 11.] The cost of this latter assistance should not be borne by ratepayers as it arises only because of the complicated organizational structure of the Company and Leisure Properties. This tax advice was needed only for purposes of avoiding paying taxes because of the fact that Leisure sold the Utility assets for o bogus $3.0 million. This tax advice would not be needed, if the sale between Leisure and the Company has been arm's-length. [Tr. 465-68.]

Sixth, the restructuring expenses is abnormal and nonrecurring as admitted by Mr. Brown. [Tr. 469.]

Seventh, Exhibit 3 showed that Ms. Withers services were needed to keep the limited partners taxes straight. [Tr. 471, Exhibit 3.] Clearly, expenses for such services are not properly borne by ratepayers.

The need for Ms. Withers' services is dubious at best: it lacks the certainty, necessity, and credibility required by the Commission to support pro forma adjustments. This $6,000 pro forma adjustment to test year should be rejected.

ISSUE 18: Should an adjustment be made to reduce legal contractual services?

DISCUSSION

Yes. The Company's requested proforma adjustment should be reduced by $21,000.

Mr. Brown's dual role as Utility manager 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. The Utility provided no support for its requested $24,000 in legal expenses. Instead, the Utility would have the Commission rely on the word of Mr. Brown that this is the amount needed. Even the Company modified its request to $12,000 in legal expenses.

The Company offered no contemporaneous time records of Mr. Brown's legal services during most of 1993 and all of 1992. [Tr. 642.] Consequently, 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.

Time records maintained for 4 weeks in 1993 and beginning in 1994 showed: the 1993 time charged to legal did not necessarily require the expertise of a lawyer and the 1994 time records showed a great deal of time spent on settlement of DEP problems. Unquestionably, neither of these endeavors should be charged to ratepayers. [Tr.643.]

Similarly, actual third-party legal fees incurred during the test year do not support the Company's need for $24,000 of legal services. The bills rendered during the test year should be considered nonrecurring or not appropriate for recovery from ratepayers. [Tr. 643-44.]

Likewise, actual third-party legal bills incurred during 1993 and 1994 do not support the Company's request. Only $234 was incurred during 1993 and no non-rate case expense was incurred during 1994. [Tr. 503, Exhibit 13.] For 1993, the only bill rendered to the Utility by Mr. Brown was for the sum of $1,000. [Tr. 506 and Exhibit 14.] While Mr. Brown kept time records of his time spent on legal Utility matters for the last six or seven months, for his other legal clients he kept time records for the last 25 years.

[Tr. 518.] The standard for the Utility should be no different that the standard for Mr. Brown's other legal clients. No prudent business man or woman would pay a bill without adequate documentation and detailed billing statements.

Furthermore, a sample of recent time records maintained by Mr. Brown show that some of the legal time charged to the Utility in no way related to Utility matters. [Exhibit 15 and Tr. 532-34.] The Commission must infer that this was not an isolated instance, but instead a routine experience. Given the litigious nature of Mr. Brown, his numerous companies, and his many debts, it would not be surprising to find Mr. Brown constantly dealing with legal problems not related to Utility matters.

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 the Utility. In addition, the Commission can rely upon what it recently allowed a similarly situated Utility--$2,854. Both of these objective measures of reasonable legal fees are substantially less than the amount requested by the Company. Consequently, an adjustment of $21,000 is appropriate. [Tr. 644-45.]

ISSUE 19: Should an adjustment be made to reduce management fees?

DISCUSSION

Yes. Mr. Brown serves several functions on behalf of the Utility, but the evidence shows 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. [Tr. 639-41.]

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, the Utility, through Mr. Brown, now invites the Commission to rely upon his recollection. [Tr. 639-41.]

If the Commission does not adopt the Citizens' recommendations concerning other aspects of Mr. Brown's compensation (legal fees, health insurance, travel allowance, and cellular phone) then it would be appropriate to reduce the Company's revised requested management fee of $42,000 such that the total compensation paid to Mr. Brown for management and legal services, including benefits does not exceed $42,850. [Tr. 641.]

ISSUE 20: Should any adjustment be made to contractual services-other?

DISCUSSION

*Yes. The majority of these expenses have never been incurred. Moreover, a portion of the proposed expenses are occasioned by neglect of Utility assets which now need more than maintenance--they need rehabilitation. $70,011 of this pro forma adjustment should be rejected. *

Concerning the tank maintenance program, the Company alleged that the DEP mandated immediate arrangements for a ground storage maintenance program and that

ongoing maintenance was necessary to preserve the integrity of the elevated tank. In support of its requested proforma adjustment the Company obtained a bid from Eagle Tank Technology Corporation. The bid clearly indicated that a portion of the cost of maintaining the ground storage tank was necessitated by the failure of management of maintain the tank in the past. Eagle Tank Technology Corporation wrote: "As we discussed before, we have to return these tanks to a certain order to place them on our maintenance program." The Company tried to suggest that a follow-up letter obtained from Eagle Tank Technology showed that no remedial work was necessary. [Tr. 1293.] However, this letter merely said that "the condition of your tank is not uncommon for that particular structure." [Exhibit 61.] Mr. Brown testified that the Company has always maintained its ground storage tank. [Tr. 1292.] But the evidence reviewed by Ms. Dismukes showed that the Company had not incurred any expense for this purpose in the three years prior to the test year. [Tr. 772.] Even, Mr. Biddy, the Company's own witness testified that the tanks had not been properly maintained. [Tr. 1227-28.] The additional cost to return the tanks to proper order should not be charged to customer. This cost, $51,958 or $8,660 annually should be removed from the Company's requested proforma adjustment.

The next proforma adjustment to contractual services-other concerns the Company's request for $37,493 for pipe cleaning. The Company's estimate is based upon a bid for these services from Professional Piping Services, Inc. The Company's request is comprised of $35,040 for cleaning the distribution system and $2,453 for cleaning the transmission line across the bridge. [Tr. 656.] In its rebuttal case, the Company modified

its request and asked only for funds to clean the transmission line across the bridge. [Tr. 1294.] In the exhibits attached to the rebuttal testimony of Mr. Brown, another bid was provided from the same company to clean the transmission line across the bridge. This bid was for $21,183, or $2,118 annually, using a 10-year amortization period. [Exhibit 61.] As Ms. Dismukes testified, if the Commission approves this expense, it should be reduced by one-half, since the Company has applied for a grant to fund 50% of this expense. [Tr. 656.] The Citizen's believe that the Commission can not legitimately approve this requested expense because the Company has not provided the Commission with competent substantial evidence that this is the lowest cost it could obtain for the potential services to be rendered. Furthermore, the Company has not adequately demonstrated that the cleaning of the distribution system is needed.

If the Commission grants the expense to clean the line across the bridge, it should be limited to 50% of $2,118--the annual amortization expense to clean the transmission line across the bridge.

The Company is also requesting a $23,909 adjustment for testing services. The Citizens believe that the Commission should reject this expense request because the Company failed to provide more than one quote for the services to be rendered. In the alternative, the Citizens urge the Commission to adopt the recommendation of Ms. Dismukes and reduce the proposed adjustment by $1,870 for duplicative testing expenses. [Tr. 656.] In addition, the Commission should remove from the cost estimate the duplicative transportation charges, as agreed to by Mr. Brown. [Tr. 1528-29.]

Lastly, 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 agent beyond the control of St. George be appointed, and that the condition of escrow be verified by a designated commission staff employee acceptable to the Citizens.

ISSUE 21: Should transportation expenses be reduced?

DISCUSSION

Yes. Transportation expenses should be reduced by $11,700.

The Company's requested proforma adjustment is based upon cash paid to employees and to Mr. Brown for transportation allegedly driven while working for the Utility. 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. [Tr. 657.]

Because the Utility maintains no records, the Commission is 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. Nevertheless, it is reasonable to assume that the employees stationed on the island (Mr. Garrett and Mr. Shiver) must travel in association with their work. The Commission, however, should not be persuaded by the Company's last ditch effort to provide mileage documentation for one month for Mr. Garrett's travel. As Ms. Dismukes noted, this sample, may or may not be indicative of the amount of travel required by Mr. Garrett. [Tr. 775.] Furthermore, it has no relation to the travel required by Mr. Shiver.

While assumption is a very poor substitute for evidence, the Citizens recommend that half of the Company's requested travel allowance for Mr. Shiver and Mr. Garret be included in test year expenses.

Conversely, the Commission should not allow the Company to collected increased rates for any travel allowance for the administrative staff. The Company provided no evidence of how many miles were traveled by these employees. Ms. Dismukes testified that the miles for the administrative staff in Tallahassee appeared excessive. [Tr. 775.] The Commission should not reward the Company for poor management practices by allowing a travel allowance for undocumented and unsubstantiated mileage.

ISSUE 22: Should an adjustment be made to reduce insurance expense?

DISCUSSION

Yes. The Utility's failure to provide adequate support for its requested expenses is reason enough for the Commission to reject the entire expense. The Citizens recommend that the Commission disallow $36,502 for general liability, workman's compensation, and property insurance.

The Company modified its original request apparently in response to the testimony of the Citizens. Originally, the Company requested insurance expense of $36,502 based upon one quote from one insurance company. [Tr. 657-58.] The Citizens objected to the woefully inadequate support for the Company's requested proforma adjustment. In response, in its rebuttal case, the Company produced another estimate--this time substantially lower than the original estimate. In fact, this new estimate was $5,306 for

workers compensation and $7,397 for general liability and property insurance for a total of $12,703--$23,799 less than originally requested by the Company. [Exhibit 61.] Mr. Brown asserts that he obtained bids from at least three insurance agents. [Tr. 1295.] The question the Commission should ask is: If this is the case, why weren't the bids produced? The Company has the burden to prove that it obtained the least expensive insurance available to it. The Company did not meet this burden. The Company apparently believes that if it comes to the Commission with an estimate substantially below its original estimate, the Commission will wash away its sins and grant the modified request. The Citizens believe that to grant even the Company's modified request, would be an injustice to ratepayers. The Commission should not reward the Company for failing to undertake sound management practices. The Commission should also be cognizant of the fact that it the Company's last case the Commission awarded it an allowance for insurance expense, but the funds were never used for this purpose. The Citizens believe that the Commission should reject the entire $36,502 pro forma adjustment.

ISSUE 23: Is St. George's level of unaccounted for water excessive, and if so, should an adjustment be made to the chemical and purchased power expenses?

DISCUSSION

*Yes, relative to the Company's representation that the going forward level of unaccounted for water was only 2%. Accordingly, an adjustment to chemical expenses of $538 and to purchased power of $2,888 should be made. *

During the test year the Utility experienced 15.27% unaccounted for water. [Tr. 666.] As admitted by Mr. Seidman, St. George represented in its response to Staff's Interrogatory 7, that on a going forward, average annual basis, it expected to experience only 2% unaccounted for water. [Tr. 1069 and Exhibit 38.] The Citizens' witness Dismukes relied upon the Company's representation in its response to Staff Interrogatory 7. The Citizens believe that the Commission should hold the Company to a reasonable interpretation of its response to Staff's Interrogatory 7. The Company could have clearly and accurately responded to the Staff's Interrogatory, but it chose instead overstate its case and brag about its 2% unaccounted for water. However, when the Citizens attempted to legitimately use this figure to properly adjust test year chemical and purchased power expenses, the Company fessed up. Such gamesmanship should not be endorsed by the Commission. The Commission should accordingly adjust test year chemical and purchase power expenses as if the Company experience 2% unaccounted for water.

In addition, the Company had three overflows which caused a loss of 435,000 gallons, in addition to losses by way of unaccounted for water. The chemical and purchased power associated with this lost water should not go in the test year since the cause of the loss is now corrected. [[Tr. 667.]

In total, these items necessitate an adjustment to chemical expenses of $538 and to purchased power by $2,888. [Tr. 667 and Exhibit 18, Schedule 17.]

ISSUE 24: Should any adjustment be made to bad debt expense?

DISCUSSION

Yes. The Company provided no competent evidence to support its request. The Commission should reject the Company's request and adopt the recommendation of the Citizens' witness Dismukes. Ms. Dismukes testimony on this subject was unrebutted. Accordingly, the requested proforma adjustment should be reduced by $4,707.

Support for the Company's bad debt expense request was pitiful at best. The Company provided no evidence as to its historical bad debt expense. The Company could not explain the document that it relied upon to support its request. [Tr. 659.] The document does nothing to support the requested $6,276. [Exhibit 18, Schedule 14.] The Commission could reasonably allow the Company no bad debt expense. However, as a conservative estimate, the Citizens believe the Commission can look to the amounts incurred by other Class B utilities. Such a comparison yields approximately one-fourth of the amount requested. Thus, $4,707 of the pro forma adjustment should be rejected. [Tr. 660.]

ISSUE 25: Should miscellaneous expenses be reduced?

DISCUSSION

Yes. Miscellaneous expenses should be reduced by $6,831 as depicted in Exhibit 18, Schedule 15.

Included in this issue are four items: Mr. Brown's cellular phone; corporate filing fees of a nonutility affiliate, which is a corporate partner of the general partnership which is the Utility; certain items from the staff audit which are nonrecurring or nonutility; and fourth, non Utility and nonrecurring telephone charges. These latter two adjustments

were agreed to by the Utility and will not be discussed further. [Tr. 970-71.]

Concerning the cost of Mr. Brown's cellular phone, the Citizens do not believe that it is necessary for Mr. Brown to function in a effective and efficient manner. Furthermore, since Mr. Brown is not employed by SGU, this expense is more properly paid for by Armada Bay Company, not SGU. In addition, the Company has no basis for assuming that Mr. Brown's use of the cellular phone is devoted 50% to SGU and 50% to other activities. Accordingly, the Commission should disallow $1,200 of miscellaneous expenses associated with Mr. Brown's cellular phone. [Tr. 660-61.]

The Citizens reject the notion that ratepayers should bear the cost of corporate filing fees associated with Leisure Properties, Ltd. According to the Company, in the past, it had not charged the cost of filing the Leisure Properties, Ltd., annual report to SGU. Apparently, the Company now believes these fees should be charged to SGU. As the Citizens' witness Dismukes testified, there is no efficiency associated with the SGU/Leisure Properties organizational structure. Likewise, there is no advantage to the ratepayers of having Leisure Properties, Ltd., be the general partner of St. George Island Utility Company, Ltd. [Tr. 661.] Mr. Brown's specious argument that the corporate structure saves ratepayer corporate income taxes should be rejected outright. [Tr. 471.] A subchapter S corporation would accomplish the same goal, without the added need for a general partner such as Leisure Properties. Since the Company has not been able to attribute any benefit to the customers of SGU for the current organizational structure which results in added costs, the additional cost of filing the annual report should not be passed onto ratepayers. [Tr. 661.] Accordingly, the Commission should reject the

Company's request to increase test year expenses by $576.

ISSUE 26: What is the appropriate amount of rate case expense?

DISCUSSION

The appropriate amount of rate case expense is $77,188.90.

According to the untimely filed Late-Filed Exhibit 43, the Company is requesting rate case expense of $154,734.88. The Company, however, only provided support for $90,501.56 in Exhibit 30 and an additional $23,272.89 in Exhibit 43A. The Utility was supposed to provide additional supporting documentation for its rate case expense request through the hearing in a Late-Filed Exhibit 43. This late-filed exhibit as well as all only two other late-filed exhibits were due August 25, 1994. [Tr. 1672.] Predictably, the Company failed to comply with this deadline and did not produce any late-filed exhibits to the Citizens, the St. George Island Water Sewer District, or Staff Counsel on August 25, 1994. Accordingly, the Company failed to meet its burden of proof with respect to any additional rate case expense requested beyond that contained in Exhibits 30 and 43A. The Citizen urge the Commission to disallow any rate case expense request in excess of $113,774.45.

With respect to the $113,774.45 of rate case expense for which the Company provided supporting documentation, several adjustments are necessary.

Management and Regulatory Consultants

The Utility provided documentation for the rate case expense of Mr. Seidman of $39,974.39. [Exhibit 30.] Any request beyond this amount should be categorically denied

by the Commission because of the Company's failure to provide additional supporting documentation as it represented it would during the hearing.

In addition, the Citizens believe that of the documented $39,974.39 of Mr. Seidman's fees, $14,974.39 should be disallowed for two reasons. First, in the Company's dismissed case the Company indicated that the fee for this consultant would be $25,000. In the instant case the Company is requesting $51,464.39, of which only $39,974.39 is properly documented. A comparison between the two cases showed that the services to be provided were the same, but the fee unexplainably increased by $25,000. The Company failed to explain why it was necessary or prudent for this consultant's fees to double. [Tr. 668-69.]

Second, some of the additional cost associated with Mr. Seidman's fee is related the fact that after the first case was dismissed the Company substantially revised its MFRs and refiled testimony. A review of the amount of rate case expense requested for Mr. Sideman as depicted on Exhibit 30, shows that $18,300.41 is requested for preparation of MFRs and testimony associated with the case that was dismissed. The Citizens believe that a large portion of this expense was not prudently incurred and as such should not be charged to ratepayers. Had the Company properly prepared its MFRs and noticed its customers, the customers would not be asked to pay for the preparation of two (actually three) sets of MFRs and at least two and possibly three sets of testimony. The Citizens believe that disallowing $14,974.39 of Mr. Seidman's fees will properly allow the Company to recover a portion of the cost of preparation of the dismissed MFRs that may have been beneficial for purposes of preparing the instant case MFRs.

The Company originally requested recovery of $18,792.43 for expenses associated with Rhema Business Services. [Exhibit 30.] Rhema was originally hired by the Company to prepare the Company's MFRs and to provide expert accounting testimony. Mr. Brown subsequently changed his mind and hired Management & Regulatory Consultants. The work performed by Rhema was primarily for the preparation of draft MFRs for a test year period ending September 30, 1992. The Citizens believe that it would be exceedingly unfair to charge ratepayers for the preparation of a third set of MFRs and testimony. Clearly, MFRs prepared for an entirely different test period would be of limited use in preparing MFRs for the dismissed and instant case. Much of the work prepared by Rhema was duplicated by Management & Regulatory Consultants. These duplicative costs should not be borne by ratepayers. The Citizens urge the Commission to adopt the recommendation of Ms. Dismukes and disallow three-fourths of the fees charged by Rhema. Accordingly, $9,661.51 of Rhema's charges associated with preparation of the MFRs and testimony should be disallowed.[12] [Tr. 671-72.]

Legal Fees

The Company requested $32,497.53 of legal fees for the firm of Apgar, Pelham, Pfeiffer & Theriaque. [Exhibit 30.] Of this amount, only $29,911.00 was properly documented, as the Company failed to timely provide Late-Filed Exhibit 43.

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[12] $7,380.79 is 75% of bills rendered through 2/1/93 as depicted on Exhibit 30, except the bill for 12/2/92. $2,280.72 is 50% of $4,561.43, the bill for 12/2/92, of which Mr. Seidman only included 50% of the total bill.

But even this amount is excessive. The Citizens believe that the charge of $175 an hour for the services of Mr. Pfeiffer are excessive for several reasons.

First, Mr. Pfeiffer has no experience litigating water and sewer Utility rate cases before the Commission. Clearly, under these circumstances a significant amount of time was spent getting up to speed on the administrative procedures of the Commission and the issues unique to utilities in general and water companies in particular. Even Mr. Seidman admitted that he did not know if it was appropriate for the utility to pay $175 per hour for a person with less than a full expertise in utility matters. [Tr. 1128.]

Second, Mr. Pfeiffer attended several depositions with Mr. Brown also in attendance. During these depositions, Mr. Brown conducted the questioning, not Mr. Pfeiffer. The customers of the Utility should not be required to pay for legal services of Mr. Pfeiffer when his attendance at these depositions was either unnecessary or served only to acclimate him to the issues in the case. Mr. Brown conceded that the cost of attending the deposition of Dr. Ben Johnson should not be charged to ratepayers. [Tr. 1356-57.]

Third, the going rate for water and wastewater lawyers in Tallahassee is significantly less that $175 an hour. Mr. Brown testified that Mr. Girtman's rate is $125 or $135 an hour. [Tr. 1350.] Mr. Seidman testified that the MFRs showed an hourly rate of $125 an hour. [Tr. 1127.] In Order No. PSC-93-1675-FOF-WS the Commission noted that the attorney for that case, Marty Deterding charged $150 per hour. The Citizens believe that it would be more reasonable to determine the legal fees in this proceeding using an hourly rate of $135 per hour. This recognizes the going rate in Tallahassee as

well as the capabilities and experience of Mr. Pfeiffer.

Fourth, the customers of the Utility should not be required to pay the $175 per hour excessive rate because Mr. Brown could find not an experienced lawyer to represent him. [Tr. 1352-54.] Mr. Brown contacted several lawyers, all of whom charge substantially less than $175 per hour, but none were willing to represent him. [Ibid.]

Fifth, a significant portion of rate case expense was incurred because of the Utility'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 the Utility's resistance to discovery should be rejected as unreasonably incurred.

Based upon the foregoing, the Citizen recommend that following rate case expense for legal services.

	Actual	Recommended
June 15, 1994 Statement		
48 hours $175/$135	$8,400.00	$6,480.00
5.25 hours	183.75	183.75
Expenses	166.33	166.33
Total	$8,750.08	$6,830.08
July 5, 1994 Statement		
37 hours $175/$135	$6,475.00	$4,995.00
Ben Johnson Depo @ 4 hour		(540.00)
Expenses	522.45	522.45
Total	$6,997.45	$4,977.45
August 3, 1994 Statement		
71 hours $175/$135	$12,425.00	$9,585.00
11.5 hours	402.50	402.50
Expenses	1,335.97	1,335.97
Photocopying[13]		(505.00)
Total	$14,163.47	$10,818.47
Grand Total	$29,911.00	$22,646.00

The above tables show that legal fees and expenses should be reduced by $7,265.00.

Overtime

The Citizens do not believe that professionals such as Ms. Chase and Ms. Hills should be paid for overtime. This is not a standard operating procedure as both persons are

[13] The August 3, 1994 bill from Apgar, Pelham, Pfeiffer & Theriaque contained charges at 25 cents a page for 2,525 copies. To copy this many copies at 25 cents a page is imprudent. Copying of this magnitude should have been taken to a professional copier who would have charged substantially less than 25 cents a page. The Citizens have used 5 cents a page as a reasonable unit price for this many copies.

salaried. This request is nothing more but an attempt to run up rate case expense. Accordingly, the Citizen recommend disallowance of overtime expenses of $1,841.35. [Exhibit 30.]

Copying Charges

Exhibit 43A showed copying charges of $453.65. The Citizens do not believe that the Company has supported this expense. The Citizens believe that the copying charges were for the numerous exhibits the Company attempted to get into the record through Mr. Brown that were ruled inadmissable. Accordingly, these charges should not be borne by ratepayers. The Commission should disallow $453.65 of copying charges. [Exhibit 43A.]

Bond Premium

The Company expects its ratepayers to pay for a bond premium in the amount of $1,715.00. [Exhibit 43A.] The Citizens believe this request is ridiculous. As the Commission is well aware, were it not for the Utility's failure to follow Commission orders, failure to pay bills, failure to make timely filings, and failure to comply with Commission practices and policies there would have been no need for the Utility to obtain and post a bond. The customers of this Utility should not be required to bear the added expense associated with the Utility's continual disregard for its regulator.

Withers Charges

A review of the bills of Ms. Withers attached to Exhibit 43A show two questionable entries labeled "Meet with IRS regarding audit" for a total of 6 hours. It is not clear how this relates to the instant rate case. The Company has failed to meet its burden of proof, as such the associated costs of $600 should be disallowed.

Summary

The Commission should disallow the following rate case expenses:

Requested Expense	$154,734.88
Undocumented Amount	(40,960.43)
Management & Regulatory	(14,974.39)
Rhema	(9,661.51)
Legal	(7,265.00)
Overtime	(1,841.35)
Copying Charges	(453.65)
Bond Premium	(1,750.00)
Withers	(600.00)

Allowable Rate Case Expense $ 77,188.90

Late-Filed Exhibit 43

As indicated above, this late-filed exhibit was not provided to the Citizens until August 26, 1994, despite the fact the Chairman ruled it was due on August 25, 1994. The Citizens believe the Commission should not grant any of the additional rate case expense found in or supported by Exhibit 43.

Nevertheless, the Citizens realize that the Commission may not adopt this argument. Consequently, the Citizens will address the untimely Late-Filed Exhibit 43.

Exhibit 43 contains $6,850.00[14] of consulting fees for TMB Associates. The Commission should disallow this expense in its entirety for the following reasons. First, Mr. Brown testified that he was not requesting any rate case expense for the services of TMB Associates. [Tr. 1357.] Second, Mr. Seidman explained that he did not include any

[14] The summary of Exhibit 43 shows $6,850.00, however, the actual bill is only for $5,850.00.

expenses on Exhibit 30 for TMB Associates because the associated charges were for background information and were not really rate case related. [Tr. 1141-42.]

It is interesting to note that most of the charges in question could have easily been produced for purposes of Exhibit 30, because the services were rendered during the months of May, June, and July--well before Exhibit 30 was prepared. One has to wonder why these billings were withheld from Exhibit 30. Could it have been that the Utility did not want to answer questions concerning the prudence and reasonableness of the expense? Regardless, the Commission should not allow this expense as the Citizens were not afforded the opportunity to cross-examine the Company or otherwise fully evaluate the charges. Exhibit 43 also contains hotel and meal charges for Mr. Beard. The hotel charges in the amount of $175.87 should be disallowed.

Exhibit 43 contains $53.00 in hotel charges for Mr. Brown even through he did not show up. The Company has failed to explain or demonstrate by ratepayers should pay for a hotel room that was not used. Accordingly, the Commission should disallow $53.00 in hotel charges.

ISSUE 27: Should an adjustment be made to amortization expenses for the system analysis, aerator analysis, hydrological study, and fire protection studies?

DISCUSSION

Yes. Four adjustments are necessary, reducing test year proforma expenses by $25,345.

System analysis

The Company claims that a revised system analysis is required by the DEP. However, the DEP correspondence to St. George indicates that what they want is an update. The Utility 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. [Tr. 663-64.]

Aerator analysis

The Company claims that DEP required it to conduct and aerator analysis in 1992 and 1994. As such, it amortized the cost of the original 1992 study over a two year period and the cost of the revised study over a two year period. [Exhibit 18, Schedule 16.] In contrast to the Company's assertion, is the correspondence between the Utility and the DEP. According to the DEP, the original aerator analysis performed by the Company was deficient. [Tr. 664-65.] Two conclusions must be reached from this fact: first, ratepayers should not be made to pay for the revised study since it would not have been necessitated had the first one not been deficient; and second, a revised study would not have needed to be conducted had the first one been properly done, thus refuting the Company's rationale for a two-year amortization period. Based upon the foregoing, the Commission must reduce the Company's test year proforma adjustment by $3,234. [Exhibit 18, Schedule 16.]

Hydrological study

The Utility's original $45,000 estimate for this study was completely unsupported.

[Tr. 665-66.] After the filing of its direct case, the Company actually had the study conducted for $12,000. Originally the Company requested a 5-year amortization, however, it changed its request to two years. [Tr. 1298.] The Citizens believe that the Commission would be justified in disallowing the entire expense, as recommended by Ms. Dismukes, since the Company's documentation was woefully inadequate. Nevertheless, the Citizens are willing to accept the $12,000 expense. This expense, however, should be amortized over five years, not two. The Company's proforma adjustment should be reduced by $6,600.

Fire protection study

The original $30,000 cost for the fire protection was an estimate devoid of any substantiation. [Tr. 666.] Subsequent to the filing of its direct case, the Company claimed that it obtained two more bids for the study. [Tr. 1303.] Attached to the rebuttal testimony of Mr. Brown was a bid for $12,000. The other two bids, allegedly obtained by Mr. Brown, were never provided or produced. As such, there is no way the Commission can be assured that the Company obtained the lowest bid, or for that matter that it actually received three bids. Accordingly, the Citizens recommend that the Commission disallow this expense. The Company's test year proforma adjustments should be reduced by $6,000.

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

DISCUSSION

Yes. The Company's filing includes a new generator in rate base. The repair cost for the old generator is non-recurring. The Company provided no evidence that the new generators would require the same level of repair as the old one. Accordingly, $2,665 should be removed from test year expenses. [Tr. 675.]

ISSUE 30: Does the utility's case in chief present an appropriate matching of revenues and expenses?

DISCUSSION

No. St. George's case is based upon a 1992 test year; yet the Commission is urged by the Utility to consider a number of 1993 (and in some cases, 1994) expenses as pro forma adjustments to the test year. The Commission should consistently adjust the Company revenues, expenses, and investment to a 1993 level.

The Utility's test year is no doubt stale. When it filed this case the Company had the option of filing with a December 1993 test year. The Utility, however, chose not to do this presumably because it a just completed a filing, that was dismissed, with a December 1992 historical test year.

The Company argues that the test year should be adjusted for known and measurable changes. However, the only adjustments it made were to its expenses. The Company did not consistently adjust revenues for known and measurable changes. Since historical 1993 revenues and investment are known, there is no reason not to adjust the Company revenues, expenses, and investment for the known and measurable aspects of 1993 including customer growth. If the Commission fails to make the adjustment

recommended by Ms. Dismukes, it will set the Company's revenue increase effectively using the 1992 levels of revenues and investment with a 1993/94 level of expenses. Such a mismatch will result in a significantly overstated revenue requirement. [Tr. 634-35.] The Citizens recommend adjustments to test year revenue and expenses, and investment as follows: 1) Test year revenue should be increased by $35,094 to recognize the 1993 level of revenue. [Tr. 636.] 2) Test year expenses should be increased by $3,365 to recognize 1993 expenses not already adjusted by the Utility. [Tr. 636.] (A test year adjustment to recognize change in investment is reflected in the section dealing with rate base.) 3) Test year depreciation expense should be reduced by $9,801 consistent with the 1993 level of investment. [Tr. 637.]

RATES AND CHARGES

ISSUE 35: Should the utility's service availability charges be escrowed?

DISCUSSION

Yes. This Company has consistently disregarded the Commission's rules, regulations, orders, and policies. Accordingly, the Commission can not be assured that the Company will properly use the service availability charges collected from its customers. As such the funds should be escrowed.

ISSUE 38: Should the utility's AFPI charge be adjusted?

DISCUSSION

Yes, to the extent that the Commission adjusts the Company's rate base and used and useful percentages.

Respectfully submitted,

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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 29th day of August, 1994.

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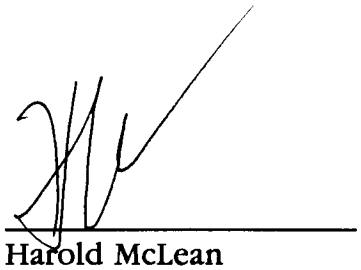

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