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850
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FILE COPY

December 12, 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. 940109-WU
(St. George Island Utility Company, Ltd.)

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizen's Motion To Strike.

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

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG Pierson
- LIN 3
- OPC _____
- RCM _____
- SEC 1
- WAS Willis
- OTH _____

Sincerely,

Harold McLean
Associate Public Counsel

Enclosures

RECEIVED & FILED

EPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
12469 DEC 12 94
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Interim and) DOCKET NO. 940109-WU
Permanent Rate Increase in)
Franklin County, Florida by) Filed December 12, 1994
ST. GEORGE ISLAND UTILITY)
COMPANY, LTD.)
_____ /

CITIZENS' MOTION TO STRIKE

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, move the Commission to strike certain material from the Motion for Reconsideration filed by St. George Island Utility Co. Ltd. (SGU) on November 29, 1994 (Motion) and say:

1. SGU included in its Motion for Reconsideration a letter from Les M. Thomas identified as Attachment 3 to the Motion;
2. The Commission is restricted to matters of record in reconsidering an order as it is when it issues an order (Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 [Fla. 1974]; In Re: Joint Petition to Determine Need for Electric Power Plant to be Located in Okeechobee County, Docket No. 920520-EQ, Order No. PSC-92-1493-FOF-EQ [Fla. PSC 1992]);
3. Attachment 3 to the Motion is ostensibly a letter from one Les M. Thomas, a stranger to this case, having neither appeared nor testified as to any matter at issue, which states apparent disagreement with the Commission's interpretation of the evidence

of record before it;

4. The content of the administrative record in a case is governed by Section 120.57(1)(b)6, Florida Statutes (1993);

5. Nothing within the aforementioned statutory provision includes material such as Attachment 3; nothing within any aspect of Florida law or decisions of this Commission would permit consideration of Attachment 3;

6. This Commission has frequently declined (as it must) to consider material outside the record in direct cases and in petitions for reconsideration. (See Order No. PSC-92-1493-FOF-EQ, supra, p.7);


7. The Commission has granted a motion to strike in the context of a motion for reconsideration where the material asserted was "not properly part of the administrative record" (Order No. PSC-92-1493-FOF-EQ, supra, p.7);

8. SGU has offered no explanation, if any it could, as to why it seeks consideration of material patently outside this record¹.

¹ As with the case cited by SGU in its Motion for Consideration, (State v. Green, 106 [sic] So. 2d 817, 818 (Fla. 1st DCA 1958), it is not a compliment to the intelligence, the competency or the industry of the Commission to be told that it overlooked and failed to consider matters which were never presented to it.

WHEREFORE, the Citizens of the State of Florida move to strike attachment 3 to the Motion for Reconsideration filed by St. George Island Utility Co. Ltd. on November 29, 1994.

Respectfully submitted,



Harold McLean
Associate Public Counsel

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111 West Madison Street
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Attorney for the Citizens
of the State of Florida

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

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 12th day of December, 1994.

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