BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ST. GEORGE ISLAND UTILITY COMPANY, LTD. for increased rates and service availability charges for water service in Franklin County	DOCKET NO. 871177-WU ORDER NO. 23258 ISSUED: 7/27/90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

ORDER SETTING SHOW CAUSE MATTERS FOR HEARING ON EXPEDITED BASIS AND REQUIRING UTILITY TO OBTAIN TITLE TO ELEVATED STORAGE TANK AND TANK SITE

BY THE COMMISSION:

On September 1, 1988, St. George Island Utility Company, Ltd. (St. George or utility) completed the minimum filing requirements for a general rate increase. A formal hearing was held regarding St. George's application on January 12 and 13, 1989, in Apalachicola, Florida.

By Order No. 21122, issued April 24, 1989, this Commission established increased rates and charges for water service. In addition, by Order No. 21122, we required St. George to make a number of system and record-keeping improvements and indicated that, if it did not make these improvements within the allotted time, we would order it to show cause why it should not be fined.

By Order No. 23038, issued June 6, 1990, this Commission required St. George to show cause why it should not be fined for failing to comply with the requirements of Order No. 21122.

MATTER SET FOR HEARING

On June 26, 1990, St. George filed a timely response to Order No. 23038. In its response, St. George denies that it knowingly refused to comply with, or willfully violated any Commission statute, rule, or order. St. George suggests that the only reason that it may have technically violated any Commission statute, rule, or order is because of constant, conflicting information from the Staff of this Commission (Staff) or because of some conspiratorial bent on the part of Staff to drive St. George out of the utility business. St. George further demands that these matters be set for hearing.

Since St. George's response raises questions of fact and, since St. George demands a hearing on these matters anyway, we find it appropriate to set these matters for hearing on an expedited basis.

NOTICE "IN ACCORDANCE WITH SHOW CAUSE ORDER"

On June 29, 1990, this Commission received, from a utility customer, a copy of a notice which was distributed by St. George. The notice states that all persons who had prepaid CIAC at the previously approved level of $500 must remit the difference between that charge and the currently approved charge of $2,020, before the utility would connect them to its system. A cover letter to the notice stated that the notice was prepared in accordance with the directives of Order No. 23038.

By Order No. 23038, we required St. George to show cause why it should not be fined for a number of alleged violations, several of which related to the propriety of its collections of various pre-paid contributions-in-aid-of-construction (CIAC), base facility, and service availability charges. In the seventeenth ordering paragraph of that order, we stated that it was, "Ordered that St. George Island Utility Company Ltd.'s opportunity to file a written response shall constitute its opportunity to be heard prior to a final determination of noncompliance or assessment of penalty." (Emphasis added) In other words, we have not yet made a final determination in this regard. Accordingly, any attempts by St. George to collect the incremental amount is both premature and inappropriate.

We have also recently been made aware of another notice, prepared in reaction to Order No. 23038, to those customers who do not have a valid water service agreement on file with St. George. This notice states that, if not resolved, this deficiency may result in the disconnection of water service. This notice is inappropriate; there are no provisions in our rules for the disconnection of service for failure to have a valid utility service agreement.

Based upon the discussion above, we find it appropriate to direct St. George to cease and desist from making any further attempts to collect additional monies for service availability from persons who have prepaid CIAC charges at the $500 level. Service to these persons should not be interrupted, nor should any requests for service from any such persons be denied, up to the level approved in our previous orders, pending our resolution of this matter at hearing.

We also find it appropriate to direct St. George to cease and desist from preparing any more notices "in accordance with our orders", unless specifically directed to do so by this Commission. St. George shall, however, prepare a notice to inform those who have prepaid CIAC at the lower rate that they should disregard St. George's previous notice, that they are not required to pay any additional amounts at this time, and that the issue of whether they will have to pay the incremental charge will be determined after the hearing. This notice shall be submitted for Staff's approval prior to its release.

THIRD ESCROW ACCOUNT

By letter dated June 20, 1990, St. George notified this Commission that it had opened a third escrow account at Andrew Jackson Savings Bank for CIAC escrow payments. Although this matter will ultimately be decided following the hearing, Staff believes that approximately $47,000 should be in this account. On June 27, 1990, $75,000 was deposited into this escrow account by a wire transfer from a finance company from Atlanta. At that time, a third person was also added as a signatory to the account, in addition to Gene Brown and Steve Tribble. We are concerned that these funds may be somehow encumbered, when they should have been deposited as cost-free CIAC, free and clear of any obligation to or from St. George. Accordingly, we will add this to the list of issues to be looked into at the hearing.

TITLE TO UTILITY PROPERTY

On June 26, 1990, St. George requested that we approve the release of $24,500 from the third escrow account in order for it to purchase a piece of property for a third well. After learning that, among other problems, the property would not be titled in St. George's name, by Order No. 23174, issued July 11, 1990, the Prehearing Officer denied St. George's request.

Prompted by the title and other problems, we went back and reviewed the transaction involving the elevated storage tank. Particularly, we reviewed a lease which states, in pertinent part:

> Whereas, ABC [Armada Bay Company] is willing to construct such elevated tank on the above-described property, provided all construction funds are supplied by St. George, and further provided that the facility is subleased to and operated by St. George . . . As a material part of this sublease agreement, ABC shall cause to be constructed with escrow funds contributed by St. George, a 150,000 gallon elevated storage facility on the above-described property in accord with the existing contract with Jack Ethredge Company, which contract is hereby assigned by St. George to ABC, . . . Immediately following the construction of said elevated tank facility, St. George shall install all necessary pipes, pumps and other appurtenances necessary to operate the above-described elevated storage facility as an integral part of the St. George Island water system . . . St. George covenants and agrees that said elevated tank facility will continue to be operated as an integral part of the St. George Island water system . . . (emphasis added)

Based upon the above-quoted language, we are concerned that the elevated storage tank, which is being constructed with customer contributions, will be owned not by St. George but by Armada Bay Company, an affiliated entity. We believe that the storage tank and tank site should be owned by St. George, not another party. Since St. George has an option to purchase this property, we find it appropriate to require it to exercise the option prior to the expiration of the lease term. Further, until St. George

provides proof that it will have legal title to the tank and tank site, we shall not approve the release of any more funds for construction of the tank.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon St. George Island Utility Company, Ltd.'s response to Order No. 23038, the matters addressed in that Order, as well as the issues regarding the source, nature, and purpose of the funds on deposit in the third escrow account, are hereby set for hearing on an expedited basis. It is further

ORDERED that St. George Island Utility Company, Ltd. shall stop any further attempts to collect any additional monies for service availability from any persons who have prepaid service availability charges at the previously approved $500 level, until we have resolved these matters at hearing. It is further

ORDERED that St. George Island Utility Company, Ltd. shall prepare a notice to inform those who have prepaid CIAC at the previously approved $500 rate that they should ignore its previous notice directing them to pay an additional $1,520, that they do not have to pay any additional amounts at this time, and that the issue of whether they will have to pay the incremental amount will only be determined after the hearing. This notice shall be submitted for Staff's approval prior to its release. It is further

ORDERED that St. George Island Utility Company, Ltd. shall cease and desist from preparing any further notices "in accordance with our orders", unless specifically directed to do so by this Commission. It is further

ORDERED that St. George Island Utility Company, Ltd. shall not interrupt service to or deny requests for service from any persons who have prepaid their service availability charges at the previously approved $500 level, up to the 200 connection moratorium level imposed by this Commission's previous orders. It is further

ORDERED that St. George Island Utility Company, Ltd. shall exercise its option on the elevated storage tank and tank site prior to the expiration of the lease/purchase contract. It is further

ORDERED that no more funds shall be released for the construction of the elevated storage tank until St. George Island Utility Company, Ltd. provides adequate assurance that it will have title to the elevated storage tank and tank site.

By ORDER of the Florida Public Service Commission this 27th day of JULY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of

appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.