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. PSC-93-0511-FOF-WU ISSUED: 4/5/93

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD

ORDER FINDING NO WILLFUL VIOLATION OR KNOWING REFUSAL TO COMPLY WITH THE PROVISIONS OF ORDER NO. 23258

BY THE COMMISSION:

By Order No. 23258, issued July 27, 1990, this Commission required St. George Island Utility Company, Ltd. (SGIU or utility) to, "exercise its option on the elevated storage tank and tank site prior to the expiration of the lease/purchase contract." Based on Commission records, the date of expiration of the lease/purchase agreement was February 7, 1992. A warranty deed for the subject property was recorded in Franklin County on February 12, 1992, in the name of Regional Land Corporation. The apparent failure of the utility to timely exercise the option to purchase the land appeared to violate the provisions of Order No. 23258, and was the basis for our issuing Order No. PSC-92-0488-FOF-WU on June 10, 1992, requiring SGIU to show cause why it should not be fined up to $5,000.00 per day, pursuant to Section 367.161, Florida Statutes. On June 30, 1992, SGIU timely filed a response to Order No. PSC-92-0488-FOF-WU and requested a hearing. This matter was heard in Tallahassee, Florida on October 20, 1992, and November 4, 1992.

At the hearing, it was undisputed that since May 29, 1992, the utility has had all indicia of ownership in the land on which the storage tank is located. The utility owner/operator, Gene Brown, testified that at all times after the notice of intent to exercise the option was executed, the utility had "equitable and beneficial ownership" of the property, and that at no time was the utility in jeopardy of losing the property. However, witness Brown admits that the utility did not acquire the "bare naked legal title" until

May 29, 1992. Witness Brown testified that it was always clear to him that the utility was not in jeopardy of losing the property because, "we bought it, we paid taxes, we paid annual payments, and we were in possession, so we were the owners." Witness Brown's testimony was supported by the testimony of real estate experts Shelfer and Buford. Mr. Buford testified that the lease/purchase agreement was not an option. Mr. Shelfer testified that Florida law construes lease/purchase agreements, such as the subject agreement, as being tantamount to a deed and mortgage to secure the payment of money. Witness Shelfer also testified that the Commission was incorrect in characterizing the lease/purchase agreement as a an option:

> It was a done deal, ... in February of 1990, because there was nothing that St. George Island needed to do to exercise an option because there was no option. It was a contract for sale. There is a difference between a contract and an option, and this in my opinion was not an option.

In addition, Mr. Shelfer testified that the notice of intent to exercise an option was a nullity and was useless.

We find the testimony of the utility's witnesses to be persuasive for the proposition that Order No. 23258 was confusing in its use of the term "option" and that the Order should have been more precise in its directives to the utility concerning the ownership interest in the land. Further, we find that even if the land was not obtained in the manner intended by our Order, the utility has now obtained all indicia of ownership in the land on which the tank is located. We note that the utility acted to obtain such indicia of ownership only subsequent to our Staff's filing of the recommendation to issue the order to show cause which was the impetus for this proceeding. Therefore, the purposes of this show cause proceeding have been fulfilled. Based on the evidence presented at hearing, coupled with the undisputed fact that the utility has now obtained all indicia of ownership in the land on which the storage tank is located, we find there is no basis to conclude that the utility willfully violated or knowingly refused to comply with the provisions of Order No. 23258 relating to the land on which the storage tank is located. Accordingly, no penalty has been imposed.

It is therefore,

ORDERED by the Florida Public Service Commission that this docket remain open.

By ORDER of the Florida Public Service Commission, this 5th day of April, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

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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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.