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**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: December 27, 1994

**RESPONSE OF ST. GEORGE ISLAND  
UTILITY CO., LTD. TO MOTION TO STRIKE**

Petitioner St. George Island Utility Company, Ltd. ("SGIU") files this Response to the "Motion to Strike" filed by Public Counsel. In opposition to the motion, SGIU states:

1. Public Counsel has moved to strike Attachment 3 to SGIU's Motion for Reconsideration. Attachment 3 is a letter from Les M. Thomas, who Public Counsel labels a "stranger to this case." Public Counsel asserts that because the letter is not part of the record that it cannot be considered in support of the Motion for Reconsideration. Public

Counsel has apparently misunderstood the reason that SGIU included Attachment 3 with its motion, and the Motion to Strike should be denied.

2. SGIU contends that the Commission has relied on hearsay evidence to support findings it has made regarding the issue of "original cost." See: Paragraphs 22-27 of SGIU's Motion for Reconsideration. Obviously SGIU was not in a position to cross-examine documents introduced by Public Counsel over objection by SGIU, and later relied upon by the Commission. Attachment 3 is offered to illustrate the unreliability of the hearsay

evidence and to demonstrate the sort of testimony that could have been elicited on cross examination if direct rather than hearsay evidence had been presented. Attachment 3 is not being offered as evidence designed to support any finding of fact, but as argument in support

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of SGIU's contention that hearsay should not be used. Obviously Attachment 3 is itself hearsay, and could not support a finding of fact on its own weight even if it had been offered as evidence at the hearing. Attachment 3, like the appraisals and other documents presented and relied upon with no opportunity for cross examination, would not constitute reliable evidence without being properly authenticated and subjected to cross examination. Public Counsel would have every reason to be distressed if the Commission relied upon such hearsay to support any finding of fact. SGIU is similarly distressed by reliance upon other hearsay documents.

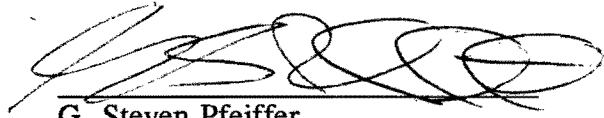
3. Public Counsel's assertion in its response to SGIU's Motion for Reconsideration that SGIU is somehow at fault for not presenting direct evidence to rebut Public Counsel's hearsay illustrates why the hearsay should not serve to support any findings of fact. It is not a party's obligation to rebut unreliable evidence. It is the forum's responsibility, mandated by the Administrative Procedure Act, not to rely upon it. Section 120.58(1)(a), Florida Statutes, Rule 25-22.048(3), Florida Administrative Code.

4. Les Thomas is certainly no "stranger to this case." Indeed, if Public Counsel had offered direct rather than hearsay evidence to support its case, Les Thomas is probably the witness it would have called.

5 Attachment 3 is not being offered as evidence. It is being presented as additional argument in support of the Motion for Reconsideration. The Motion to Strike should be denied.

WHEREUPON, St. George Island Utility Company, Ltd. opposes the Motion to Strike and requests that it be denied.

Respectfully submitted this 27<sup>th</sup> day of December, 1994.




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**Attorneys for St. George  
Island Utility Company, Ltd.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to Robert Pierson and Suzanne Summerlin, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863; to Harold McLean, Associate Public Counsel, Claude Pepper Building, Room 812, 111 West Madison Street, Tallahassee, Florida 32399-1400; and to Barbara Sanders, St. George Island Water and Sewer District, Post Office Box 157, Apalachicola, Florida 32320 this 27<sup>th</sup> day of December, 1994.



Attorney