

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of HUGH KEITH against)	DOCKET NO. 890450-WS
BEVERLY BEACH ENTERPRISES, INC. d/b/a)	ORDER NO. 22070
BEVERLY BEACH SURFSIDE UTILITY CO. for)	ISSUED: 10-19-89
overcharge of contributions-in-aid-of-)	
construction in Flagler County.)	
)	

Pursuant to the Order Establishing Prehearing Procedure, Order No. 21592, issued July 21, 1989, a Prehearing Conference was held on October 11, 1989, in Tallahassee, before Commissioner Thomas M. Beard, Prehearing Officer.

APPEARANCES: BEN E. GIRTMAN, Esquire, Suite 207, 1020 E. Lafayette Street, Tallahassee, Florida 32301
On behalf of Hugh Keith

MARTIN S. FRIEDMAN, Esquire, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301
On behalf of Beverly Beach Enterprises, Inc. d/b/a Beverly Beach Surfside Utility Co.

DAVID C. SCHWARTZ, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850
Counsel to the Commissioners

PREHEARING ORDERBACKGROUND

On March 28, 1989, Hugh Keith filed a complaint against Beverly Beach Enterprises, Inc. d/b/a Beverly Beach Surfside Utility Co. (Beverly Beach) for alleged overcharges of contributions-in-aid-of-construction. On the basis of Mr. Keith's complaint, this matter is currently set for an administrative hearing on November 8, 1989.

DOCUMENT NUMBER-DATE

10387 OCT 19 1989

FPSC-RECORDS/REPORTING.

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PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled, except that Beverly Beach shall file testimony regarding Issue 3 no later than October 25, 1989. All prefiled testimony in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing.

Witnesses are reminded that on cross-examination responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

ORDER OF WITNESSES

	<u>Appearing For</u>	<u>Issues</u>
Hugh Keith	Hugh Keith	Issues 1,2,3
Frank Seidman	Hugh Keith	Issues 1,3
Ron London	Hugh Keith	Issues 1,3
Siddharth Patel	Beverly Beach	Issues 1,2
William D. McGowan	Beverly Beach	Issue 2
* _____	Beverly Beach	Issue 3

* Beverly Beach's witness for Issue 3 shall be identified no later than October 25, 1989.

BASIC POSITIONS

HUGH KEITH: Hugh Keith has been charged excessive amounts by Beverly Beach. These excessive charges are for 1) contributions-

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in-aid-of-construction (CIAC), and 2) charges for water and sewer service made prior to when the utility received authorization from the Public Service Commission to impose such charges.

The CIAC charged was in excess of both a) the amount agreed upon by the parties and b) the maximum amount that would have been required by the PSC in accordance with its guidelines in Rule 25-30.580, F.A.C.

The rates charged for water and sewer services were \$2,000 per month for the six (6) months (March through August, 1985) prior to the utility's receiving PSC approval to charge interim rates and ten (10) months (March through December, 1985) prior to the setting of final rates and receiving water and sewer certificates. When interim rates were set in August, an additional \$750 per month was charged retroactively for the preceding six (6) months, to make \$2,750 per month the amount then charged for the preceding six (6) months and also charged prospectively for the four (4) months that interim rates were in effect. When final rates were set, an additional \$11,601.41 was charged retroactively by the utility for the ten (10) months prior to the setting of final rates.

None of these charges for water and sewer service were in the original contract for purchase and sale of the mobile home park or in the addendum thereto, but they were demanded by the utility and their payment was made by Hugh Keith, similar to the agreement on the \$125,000 amount of CIAC which would be paid on behalf of the mobile home park.

Therefore, Hugh Keith is entitled to recover the excessive amounts charged by Respondent for CIAC and to recover water and sewer charges paid prior to when the utility was authorized to collect such charges.

BEVERLY BEACH: The parties entered into a contract with an addendum providing that Hugh Keith would pay a pro rata share of the cost of improvements to the water and sewer systems, which costs were subject to determination by the PSC. There was never any agreement to limit Mr. Keith's pro rata share to \$125,000. In Docket No. 870412-WS, the PSC issued Order No. 18553, which approved the reasonableness of the costs of improvements as well as Mr. Keith's pro rata share. The

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charges for water and sewer service during the certification proceeding were approved by the Commission in that proceeding.

STAFF: Staff's positions are preliminary and based on the materials filed by the parties. The preliminary positions are offered to apprise the parties of those positions. Staff's final positions will be based on analysis of the evidence presented at hearing.

Staff is of the opinion that this dispute is predominantly contractual and is properly the subject of the circuit court. However, there are three limited issues which are within the sole jurisdiction of the Commission.

ISSUES AND POSITIONS

1. ISSUE: Whether Beverly Beach collected the proper amount of contributions-in-aid-of-construction (CIAC) from Hugh Keith.

POSITIONS

HUGH KEITH: The \$235,943.38 required to be paid by Hugh Keith, under protest, as a condition for Beverly Beach to release the mortgage on the mobile home park was in excess of a) an agreement between the parties limiting Hugh Keith's share of CIAC to \$125,000; b) the maximum allowed by Rule 25-30.580, Florida Administrative Code; and c) the amount set in Order No. 15504.

BEVERLY BEACH: Hugh Keith's pro rata share of the water and sewer improvements was \$235,765.44. There was no agreement to limit this amount to \$125,000. The contract between Hugh Keith and Beverly Beach, establishing Mr. Keith's share of CIAC, cannot be amended except in a written form signed and delivered by each party. Mr. Keith held a partnership interest in the park during the Public Service Commission proceeding in Docket No. 870412-WS, and the park participated in that proceeding. He cannot now relitigate that determination.

STAFF: No position as this time.

2. ISSUE: Whether Beverly Beach made imprudent expenditures

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on the construction of its water and sewer plants.

POSITIONS

HUGH KEITH: There are many items purchased by the common owners of the utility and the RV park which should not have been charged to the utility. Hugh Keith's pro rata share of these expenses should be refunded by Beverly Beach.

BEVERLY BEACH: Review of the expenses for improvements to the water and sewer systems is barred, having been decided in Order No. 18553, issued December 16, 1987. Regardless, those expenses were reasonable and prudent.

STAFF: Any expenditures made after the close of the test year of the utility's last rate case are irrelevant or not ripe for this proceeding, but are perhaps the proper subject of the utility's next rate case. As for expenditures made within the test year of the last rate case, Order No. 18553, issued December 16, 1987, speaks for itself. The Order should not be disturbed unless the Commission finds that circumstances have changed or new information has been discovered.

3. ISSUE: Whether Beverly Beach should be fined and required to make a refund for water and sewer service charges made before authorized by Commission Order.

POSITIONS

HUGH KEITH: The utility charged Hugh Keith for water and sewer services prior to being certificated by the Commission and prior to receiving any authority from the Commission to charge rates to the public. Order No. 14753 in Docket No. 840393-WS authorized the utility to begin collecting interim rates effective for meters read on or after September 5, 1985. Order No. 15504 authorized permanent rates to be collected for meters read on or after January 17, 1986. A refund of \$25,232.04 plus interest is due.

BEVERLY BEACH: The charges for water and sewer service during the certification proceeding were approved by the Commission in that proceeding.

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STAFF: No position at this time.

STIPULATIONS

1. The parties have stipulated to the authenticity of the deposition of Sid Patel, taken June 2, 1988, and identified by Prehearing Identification No. HK-4.

2. The parties further stipulated that Hugh Keith brings the Complaint in this proceeding both individually and as Trustee.

EXHIBITS

<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
Hugh Keith	Hugh Keith		HK-1 - Monthly Payment for Water/Sewer Plant Expansion
			HK-2 - Monthly Statements and Bill Summaries
			HK-3 Correspondence
			HK-4 - Deposition of Sid Patel, June 2, 1988
			HK-5 - Bills, Checks for Plant Expansion
			HK-5A - Bill Excerpts
			HK-5B - Check Excerpts
			HK-6 - Exclusive Mobile Home Dealer Agreement

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<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
Hugh Keith	Hugh Keith		HK-7 - Excerpts from Beverly Beach Annual Report, 1988
			A - Contract for Sale and Purchase dated January 22, 1985
			B - Addendum to Contract for Sale and Purchase dated February 20, 1985
			C - Letter from Larry D. Marsh to Perry W. Hodges dated November 18, 1986
			D - Order No. 14753, Docket No. 840393-WS issued August 21, 1985
			E - Order No. 15504, Docket No. 840393-WS issued December 20, 1985
			F - Letter from Larry D. Marsh to Perry W. Hodges dated August 29, 1986
			G - Letter from Perry W. Hodges to Larry D. Marsh dated December 2, 1986
			H - Complaint, Circuit Court of Broward County

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<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
Hugh Keith	Hugh Keith		I - Order, Circuit Court of Flagler County, June 20, 1988
Frank Seidman	Hugh Keith		FS-1 - Letter to Shareholders, 8/1/85
			FS-2 - Letter and attachment, to Mr. Perry Hodges, 11/2/86
			FS-3 - Quantities of Water and Wastewater Treated, 1986
			FS-4 - Park Water Consumption and Lot Occupancy, 1986
			FS-5 - Daily Water Output for Month with Highest Pumpage Rate and Average of 5 Highest Days
			FS-6 - Park Water and Wastewater Treatment Capacity Requirements
			FS-7 - Water and Wastewater Treatment Plant, Summary of Additions and Improvements
			FS-8 - Determination of Maximum Park Contribution

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<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
Sid Patel	Beverly Beach		BB-1 - December 13, 1985 letter from Sid Patel to Steve Tribble pointing out error in Staff Recommendation in Docket No. 840393-WS
			BB-2 - January 18, 1986 letter from Sid Patel to Steve Tribble pointing out error in Order No. 15504
			BB-3 - Relevant portions of September 22, 1987 staff memorandum in Docket No. 870412-WS
			BB-4 - Relevant portions of November 17, 1987 staff memorandum in Docket No. 870412-WS
			BB-5 - PSC Staff Audit Report in Docket No. 861365-WU
			BB-6 - June 6, 1985 letter from Sid Patel to William Becker
			BB-7 - August 1, 1985 memorandum to shareholders of Beverly Beach Enterprises, Inc.
			BB-8 - August 29, 1986 letter from Larry Marsh to Perry Hodges

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<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
William McGowan	Beverly Beach		BB-9 - Schedule explaining invoices in Keith Exhibit HK-5A
	Beverly Beach		*

* Beverly Beach shall file any exhibits it intends to offer for Issue 3 no later than October 25, 1989.

Staff reserves the right to introduce exhibits for the purpose of cross-examination.

RULINGS

1. On October 3, 1989, Hugh Keith filed a Motion to Shorten Time to Respond to Request for Admissions. Beverly Beach filed an objection on October 10, 1989. Hugh Keith's Request for Admissions dealt solely with the authenticity of Sid Patel's deposition, which was stipulated to at the Prehearing Conference. Therefore, Hugh Keith's Motion to Shorten Time to Respond to Request for Admissions was denied.

2. On September 29, 1989, Hugh Keith filed a Motion to Amend Complaint to include two additional allegations. One allegation was for water and sewer services charged before Commission authorization, while the other was for discriminatory CIAC charges. Beverly Beach responded on October 4, 1989, objecting to the inclusion of either allegation. At the Prehearing Conference, the Prehearing Officer denied the motion as for the discriminatory CIAC allegation, as such issue was specifically addressed in Order No. 18553, issued December 16, 1987. The Prehearing Officer granted the motion as to the allegation of charges made prior to Commission authorization, with the provision that Beverly Beach shall have until October 25, 1989, to prefile testimony and exhibits regarding this new allegation.

3. On August 8, 1989, Beverly Beach filed a Request for Official Recognition of all materials in Dockets Nos. 840393-WS, 861365-WU, and 870412-WS. No response was filed. At the Prehearing Conference, the Prehearing Officer granted the request with the modification that only materials from those dockets which are copied and referenced in a party's exhibit are officially recognized.

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PENDING MATTERS

The parties seek a ruling upon Beverly Beach's Motion for Summary Judgment.

Beverly Beach, on October 16, 1989, filed a motion for reconsideration of Order No. 22017, issued October 9, 1989, for the Prehearing Officer's failure to grant Beverly Beach's motion to strike Frank Seidman's testimony.

Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings unless modified by the Commission. It is further

ORDERED that Hugh Keith's Motions to Shorten Time and to Amend Complaint are disposed of as set forth in the body of this Order. It is further

ORDERED that Beverly Beach's Request for Official Recognition is granted to the extent set forth in the body of this Order.

By ORDER of Commissioner Thomas M. Beard as Prehearing Officer, this 19th day of OCTOBER, 1989.


THOMAS M. BEARD, Commissioner
and Prehearing Officer

(S E A L)

DCS

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

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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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.