

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaints of VILANO VENTURE DOCKET NO. 891020-WS  
against NORTH BEACH UTILITIES, INC., ) ORDER NO. 22109  
in St. Johns County for failure to ) ISSUED: 10-30-89  
comply with FPSC regulations )  
)

ORDER ESTABLISHING PREHEARING PROCEDURE

BACKGROUND

On July 24, 1989, Vilano Ventures, Inc.), ("Vilano" or "Developer"), filed two complaints against North Beach Utilities, Inc., ("NBU" or "utility") and this docket was opened. The first complaint, the "Water Complaint", addresses improvements to the water system mandated by Commission Order No. 19093, issued April 4, 1988, and quality of service requirements. The second complaint, the "Agreement Complaint", addresses the propriety of service availability charges in an October 26, 1986 agreement which was the subject of Docket No. 891120-WS - Request by North Beach Utilities, Inc. for Approval of Special Service Availability Contract with Vilano Ventures, Inc. By Order No. 22055, issued October 13, 1989, Docket No. 891120-WS was consolidated with this docket. The consolidated matter is currently set for an administrative hearing on February 19, 1990, with a prehearing conference to be held on January 31, 1990.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff, ("Staff"), during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules and regulations of this Commission.

DISCOVERY

When interrogatories or requests for production are served on a party and the respondent intends to object to or ask for clarification of an interrogatory or request for production, the objection or request for clarification shall be made within ten (10) days of service of the interrogatory or request for production. This procedure is intended to reduce delay time in discovery.

PRELIMINARY LIST OF ISSUES

On or before November 10, 1989, each party shall file a preliminary list of issues that it believes require resolution in this case. Commission Staff may also file its own preliminary list of issues on that date. The original and

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FPSC-RECORDS/REPORTING

ORDER NO. 22109  
DOCKET NO. 891020-WS  
PAGE 2

eight copies of each such list of issues shall be filed with the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863. A copy of each list of issues shall also be mailed to all other parties no later than its filing with the Commission.

#### INFORMAL PRELIMINARY CONFERENCE

An informal conference of the parties' attorneys or other representatives and Staff shall be held at 10:00 a.m. on November 10, 1989, in the conference room of the Division of Legal Services, Suite 219, the Fletcher Building, 101 East Gaines Street, in Tallahassee. The purpose of the conference shall be to define the questions of fact, law and policy considered by the parties and Staff to be at issue in this case.

#### PREFILED TESTIMONY AND EXHIBITS

In accordance with Rule 25-22.048, Florida Administrative Code, each party shall be required to prefile all written testimony that it intends to sponsor. Written testimony shall be typed on standard 8 1/2" x 11" transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding.

A copy of any prefiled exhibit sponsored by a witness shall be attached to his or her testimony and marked for identification. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing will be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

The parties shall and staff may file an original and 12 copies of their prefiled direct testimony and exhibits no later than November 30, 1989. The original and 12 copies of all parties' and staff's prefiled rebuttal testimony and exhibits, if any, shall be filed on or before December 29, 1989.

A copy of all prefiled testimony and exhibits shall also be mailed to all other parties no later than their filing with the Commission.

PREHEARING STATEMENTS

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket on or before January 12, 1990. Failure of a party to timely file a prehearing statement shall constitute a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) the name and address of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be sponsored by the party, their contents, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue, the party's position on each such issue and which of the party's witnesses will address the issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;

(h) a statement of all pending motions or other matters the party seeks action upon; and

(i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

The original and 12 copies of each prehearing statement shall be filed with the Division of Records and Reporting on or before the close of business on January 12, 1990. A copy of the prehearing statement shall also be mailed to all other parties no later than its filing with the Commission.

#### PREHEARING CONFERENCE

A prehearing conference will be held on January 31, 1990, at 9:30 a.m. in Room 106 of the Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. Any party who fails to attend the prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in that party's prehearing statement.

#### PREHEARING PROCEDURE: WAIVER OF ISSUES

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. Any party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring

that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

HEARING

The formal hearing of this matter shall be held at 9:30 a.m. on February 19, 1990, in Room 115, The Fletcher Building, 101 East Gaines Street, Tallahassee, Florida.

CONTROLLING DATES

The following dates have been established to govern the key activities of this case.

- |  |                   |
|--|-------------------|
| 1) <u>Preliminary List of Issues</u>               | November 10, 1989 |
| 2) <u>Informal Preliminary Conference</u>          | November 10, 1989 |
| 3) <u>Prefiled Direct Testimony and Exhibits</u>   | November 30, 1989 |
| 4) <u>Prefiled Rebuttal Testimony and Exhibits</u> | December 29, 1989 |
| 5) <u>Prehearing Statements</u>                    | January 12, 1990  |
| 6) <u>Prehearing Conference</u>                    | January 31, 1990  |
| 7) <u>Hearing</u>                                  | February 19, 1990 |

Based upon the above, it is

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

ORDER NO. 22109  
DOCKET NO. 891020-WS  
PAGE 6

By ORDER of Commissioner John T. Herndon, as Prehearing  
Officer, this 30th day of OCTOBER, 1989.

John T. Herndon  
JOHN T. HERNDON, Commissioner  
and Prehearing Officer

( S E A L )

DAS

Looks OK to me  
BL

M E M O R A N D U M

October 30, 1980

TO : COMMISSIONER JOHN T. HERNDON  
FROM : DIVISION OF LEGAL SERVICES (SWIM) *DS RP*  
RE : DOCKET NO. 891020-WS - COMPLAINTS OF VILANO VENTURE  
AGAINST NORTH BEACH UTILITIES, INC., IN ST. JOHNS  
COUNTY FOR FAILURE TO COMPLY WITH FPSC REGULATIONS

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The attached Order Establishing Prehearing Procedure,  
consisting of <sup>6</sup>~~7~~ pages, is ready for your review and  
signature. Please let me know if you have any questions.  
Thanks.

DAS/dlc

cc: Division of Water & Sewer

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