

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by NORTH BEACH UTILITIES)	DOCKET NO. 891120-WS
for approval of a special service availa-)	ORDER NO. 22158
bility contract with VILANO VENTURE,)	ISSUED: 11-6-89
INC., in St. Johns County)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

On October 21, 1986, North Beach Utilities, Inc., ("NBU" or "utility"), and Vilano Ventures, Inc., ("Vilano" or "developer"), executed a water and sewer agreement. On October 27, 1988, the utility requested that this Commission approve said agreement as a special service availability contract. On September 13, 1989, the developer filed a Motion to Dismiss Proceeding or in the Alternative to Abate Proceeding directed towards the utility's request. On September 27, 1989, NBU filed a Response to the developer's Motion.

The agreement to be reviewed in this docket is also the subject of a Complaint filed by the developer that is being addressed in Docket No. 891020-WS. These dockets were consolidated by Order No. 22055, issued October 13, 1989.

The Motion to Dismiss Proceeding or in the Alternative to Abate Proceeding, ("Motion"), asks this Commission to dismiss the utility's request for approval of the subject agreement as a special service availability contract or, in the alternative, to hold in abatement any decision regarding the utility's request until the Commission renders a decision in the Complaint Docket No. 891020-WS.

DOCUMENT NUMBER-DATE
 10830 NOV-6 1989
 FPSC-RECORDS/REPORTING

ORDER NO. 22158
DOCKET NO. 891120-WS
PAGE 2

The Motion notes the requirement of Rule 25-30.550(2), Florida Administrative Code that special service availability contracts be approved by this Commission prior to becoming effective, and objects to NBU's request for "unilateral and retroactive" approval of the agreement two years after its execution and without the knowledge or consent of the developer. The developer also states that it was not aware that the subject agreement was a "special service availability contract" that required the approval of the Commission and argues that had the utility sought the Commission's approval at the time of execution of the agreement, both parties could have been made aware of the utility's tariff provisions and the Commission's service availability rules. The developer further asserts that NBU's request for approval of the special service availability contract would be moot if it prevails in its Complaint.

NBU's response states that dismissal or abatement is not authorized by Commission rules. It characterizes this docket as essentially a Commission inquiry or investigation preliminary to Commission action and that there is no Commission rule to support a motion to dismiss or abate such a proceeding. Rule 25-22.037, Florida Administrative Code, the rule that addresses the filing of motions to dismiss before the Commission is in Part IV, entitled "Decisions Determining Substantial Interests". The first rule in that Part, Rule 25-22.025, Florida Administrative Code, states "nor does this part apply to Commission inquiries or investigation preliminary to Commission action." NBU further argues that dismissal or abatement of this docket would only increase the time, expense and resources necessary to resolve Docket No. 891020-WS and deprive the Commission of the opportunity to investigate and apply its rules to this matter. The utility also asserts that the developer's complaint would be moot if the Commission approves the subject contract.

We find that the points raised by the developer's Motion do not support dismissal or abatement of the utility's request that the subject agreement be reviewed for approvability as a special service availability contract. Even if the agreement was entered into without certain knowledge or submitted for approval without the developer's consent, this Commission remains able, and indeed is obligated, to determine approvability of the subject contract. We further find that

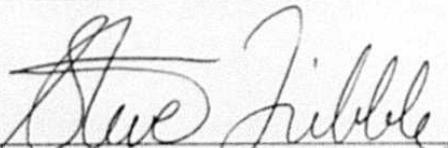
ORDER NO. 22158
DOCKET NO. 891120-WS
PAGE 3

the most expedient resolution of the issues involved in Docket No. 891020-WS and this docket would be a consolidated hearing on all issues, and not an abatement of the utility's request for approval of the subject agreement. Therefore, we find it appropriate to deny the developer's Motion.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Dismiss Proceeding or in the Alternative to Abate Proceeding filed by Vilano Ventures, Inc., is hereby denied.

By ORDER of the Florida Public Service Commission
this 6th day of NOVEMBER, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DAS

ORDER NO. 22158
DOCKET NO. 891120-WS
PAGE 4

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.