

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate to provide
wastewater service in Charlotte County by
Island Environmental Utility, Inc.

DOCKET NO. 020745-SU
ORDER NO. PSC-03-1025-PCO-SU
ISSUED: September 17, 2003

ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE TESTIMONY AND
MOTIONS TO STRIKE, AND SECOND ORDER REVISING CONTROLLING DATES

By motion dated September 3, 2003, and filed September 8, 2003, Ms. Linda Bamfield (Bamfield) seeks an extension of time to file intervenor testimony in this case. Along with Messrs. Ronald A. Koenig (Koenig) and Daniel Nolan (Nolan), Bamfield is a party to this docket, having filed a timely objection to, and request for a hearing on, the application for certificate filed by Island Environmental Utility, Inc. (IEU or utility). On August 6, 2003, IEU filed a motion to strike Nolan's objection filed August 1, 2003. On September 4, 2003, IEU filed a second motion to strike with respect to Nolan's objection filed August 15, 2003.

Motion for Extension of Time

Arguments of Parties

In the motion, Bamfield argues that she needs more time to file her intervenor testimony due September 15, 2003, because IEU has not submitted complete, comprehensive, or accurate exhibits, testimony, or application information to which she can respond. Among other points, Bamfield argues that: 1) there are certain inconsistencies in the testimony and exhibits filed by IEU on August 15, 2003; 2) it is imperative that the financial statements of IEU's shareholders be made available; 3) the applicants have not presented any evidence of technical ability to be reviewed; 4) the establishment of a wastewater facility is in direct conflict with the Charlotte County Comprehensive Plan; 5) IEU has not shown that there is a need for service in the area or whether service is available from another utility; and 6) it appears that no contact with any local, state, or federal agencies has been initiated regarding the viability and permitting of the intercoastal crossing for the mainland connection. Bamfield requests that intervenor testimony be extended by an unspecified period of time.

IEU filed a response in opposition to the motion on September 12, 2003. In its response, IEU argues that the motion purports to be filed not only on Bamfield's behalf, but on behalf of the other intervenors, as well. Bamfield has no authority to represent the other intervenors. Therefore, her motion must be construed as being applicable only as to her. Among other things, IEU argues that Bamfield's request is based upon her assertion that she does not have sufficient information from which to prepare her testimony. What she fails to recognize is that until the Commission grants the application, there are many details that must remain open. For instance, the utility would

DOCUMENT NUMBER DATE

08829 SEP 17 8

FPSC-COMMISSION CLERK

not begin the permitting process for the intercoastal crossing to the mainland until its rights to serve the Island are confirmed. Further, Bamfield's perceived omissions in the utility's filings are the types of matters which are addressed in discovery. If Bamfield does not believe that the utility has filed sufficient information as to a particular issue, her prefiled testimony can state as much, and she can then cross-examine witnesses at the hearing.

Motion for Extension of Time Granted; Intervenor Testimony Deadline Extended by 60 Days

Bamfield's motion is construed as her individual request for an extension of time to file testimony. Like Koenig and Nolan, Bamfield is a *pro se* litigant and has no authority to represent the other intervenors in this case. Nevertheless, there is ample time within the case schedule to move the intervenor testimony deadline to a later date without rescheduling the date of the hearing. Upon consideration of the foregoing, and being fully advised in the premises, Bamfield's Motion for Extension of Time to File Testimony is granted. In addition, in order to afford all intervenors more time to avail themselves of the discovery process, the deadline for filing all intervenor testimony shall be extended by 60 days. Therefore, the following revised controlling dates shall now govern this case:

- | | | |
|----|----------------------------------|-------------------|
| 1) | Intervenor Testimony/Exhibits | November 14, 2003 |
| 2) | Staff Testimony/Exhibits, if any | December 15, 2003 |
| 3) | Rebuttal Testimony | January 14, 2004 |

All other controlling dates remain unchanged and are set forth in Order No. PSC-03-0485-PCO-SU, issued April 14, 2003, the first order establishing new controlling dates.

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, "[w]ithout leave of court, any party may serve upon any other party written interrogatories to be answered (1) by the party to whom the interrogatories are directed, or (2) if that party is a public or private corporation . . . , by any officer or agent, who shall furnish the information available to that party." This rule also provides that the party to whom the interrogatories are directed shall serve the answers within 30 days after the service of the interrogatories. Similarly, Rule 1.350 provides that any party may request any other party to produce existing documents, including writings, drawings, graphs, charts, and other data compilations from which information can be obtained, within 30 days of service of the document request. Bamfield, and all intervenors, are encouraged to avail themselves of the discovery process during the additional 60-day period of time that this Order affords them, to gain access to the additional information that they may need in order to prepare their own testimonies and exhibits.

Motions to Strike Objections

Arguments of Parties

By letter dated July 17, 2003, and filed August 1, 2003, Nolan indicates his unwillingness to submit his responses to IEU's First Set of Interrogatories and First Request for Production of Documents to Nolan until he receives responses to the same discovery questions as propounded by IEU to Nolan "from each and every person involved in the Application for certificate to provide wastewater service in Charlotte County, including Martin S. Friedman." If all parties do not submit such responses, Nolan requests that the application be denied. Further, Nolan requests that IEU be ordered to name the individuals involved in the filing of the application other than Mr. Jack Boyer.

By letter dated July 29, 2003, and filed August 15, 2003, Nolan states that he is unable to produce the documents requested by IEU's First Request for Production of Documents "until all parties connected with Island Environmental have produced theirs, including that of Martin Friedman. As soon as I get theirs, they'll get mine. Quid pro quo."

IEU filed a Motion to Strike Objection on August 6, 2003, in response to Nolan's July 17, 2003, letter. In support thereof, IEU states that the discovery requests at issue were served on Nolan on March 24, 2003. By Order No. PSC-03-0791-PCO-SU, issued July 3, 2003, Nolan was directed to provide IEU with answers to these discovery requests within 30 days of the date of the Order, by Monday, August 4, 2003, at the latest. IEU states that Nolan has failed to answer the discovery requests or to otherwise respond in any meaningful way, within the time required by the Order. Nolan's refusal to answer the discovery requests prejudices IEU in the pursuit of its application. It has prevented IEU from investigating Nolan's objections to the application, assessing the impact of its proposed territory extension on Nolan's interests, and preparing a defense to his objections or structuring reasonable alternatives. IEU further argues that Nolan's continual failure and refusal to obey the terms of Order No. PSC-03-0791-PCO-SU is purposeful and flagrant. According to IEU, despite the assistance of Commission staff, it appears unlikely that Nolan will credibly respond to the discovery requests, and an order striking the July 17, 2003, objections will be the only method for achieving the objectives of the Order.

IEU filed its Second Motion to Strike Objections of Daniel Nolan on September 4, 2003, in response to Nolan's July 29, 2003, letter. In support thereof, IEU states that to date, it has not been served with any response from Nolan to its First Set of Interrogatories or its First Request for Production of Documents. Nor has Nolan served IEU with any interrogatories or requests for production of documents, although Commission staff informed Nolan that he must do so in order to require a response from IEU. IEU reiterates its arguments made in its August 6, 2003, motion to strike with respect to the prejudice that IEU suffers from Nolan's continued refusal to answer the discovery requests. Moreover, because counsel for IEU is not a party to, or a witness in, this proceeding, he is not subject to discovery. IEU argues that Nolan has exhibited gross disregard for the dignity of this Commission and an abusive and disrespectful attitude toward its lawful processes.

IEU again states that despite the assistance of Commission staff, it appears unlikely that Nolan will credibly respond to the discovery requests, and that an order striking his objections will be the only method for achieving the objectives of Order No. PSC-03-0791-PCO-SU.

Motions to Strike Objections Granted; Nolan Ordered to Provide Discovery Responses within 10 Days

Based upon the foregoing, and being fully advised in the premises, IEU's Motion to Strike Objection and Second Motion to Strike Objections of Daniel Nolan are granted. Nolan is again directed to provide his responses to IEU's discovery requests. Nolan shall serve his responses to the discovery requests within 10 days of the issuance date of this Order, and shall file a Certificate of Service with the Division of the Commission Clerk and Administrative Services, notifying this Commission of service of the discovery responses, within that same time frame. Pursuant to Rule 28-106.103, Florida Administrative Code, five extra days shall be added to the 10-day deadline if the responses are served by mail.

As set forth in this Order at page 2, the Florida Rules of Civil Procedure governing discovery provide that all parties may serve interrogatories and requests for production of documents on all other parties to the proceeding, and that all discovery must be answered timely. IEU is under no obligation to respond to Nolan's requests to answer the same discovery questions as were served upon him by IEU. Pursuant to the Florida Rules of Civil Procedure, Nolan must serve his discovery questions upon IEU in order to require a response to such questions within 30 days, unless IEU objects to such questions within the 10-day time frame set forth on Page 1 of Order No. PSC-02-1611-PCO-SU, issued November 20, 2002, the Order Establishing Procedure issued in this docket.

Finally, Nolan is admonished that his continued failure to comply with the orders of this Commission will not be tolerated. This Commission's authority to impose sanctions for such disobedient conduct derives from Rule 1.380, Florida Rules of Civil Procedure. Nolan shall henceforth comply with the orders of this Commission if he is to continue to participate as a party to this proceeding.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Bamfield's Motion for Extension of Time to File Testimony is granted. It is further

ORDERED that the controlling dates governing this docket are revised as set forth in the body of this Order. It is further

ORDERED that Orders Nos. PSC-02-1611-PCO-SU and PSC-03-0485-PCO-SU are reaffirmed in all other respects. It is further

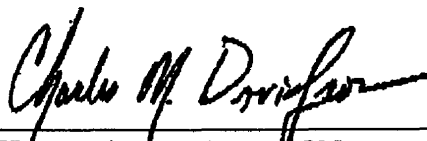
ORDER NO. PSC-03-1025-PCO-SU
DOCKET NO. 020745-SU
PAGE 5

ORDERED that IEU's Motion to Strike Objection directed to Nolan is granted. It is further

ORDERED that IEU's Second Motion to Strike Objections of Daniel Nolan is granted. It is further

ORDERED that Nolan shall serve his responses to IEU's First Set of Interrogatories and First Request for Production of Documents within 10 days of the issuance date of this Order, and shall file a Certificate of Service with the Division of the Commission Clerk and Administrative Services, notifying this Commission of service of the discovery responses, within that same time frame. Nolan shall henceforth comply with the orders of this Commission if he is to continue to participate as a party to this proceeding.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 17th day of September, 2003.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

RG

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.