

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. 22017
BEVERLY BEACH SURFSIDE UTILITY CO. for)	ISSUED: 10-9-89
overcharge of contributions-in-aid-of-)	
construction in Flagler County.)	
_____)	

ORDER DISPOSING OF PENDING MOTIONS

On September 15, 1989, Beverly Beach Enterprises, Inc. d/b/a Beverly Beach Surfside Utility Co. (Beverly Beach) filed a motion for a continuance of the filing of prehearing statements, the prehearing conference, and the hearing. By its motion, Beverly Beach requested a ruling on three pending motions prior to these events and requested oral argument on such pending motions. Hugh Keith filed an objection on October 3, 1989, solely to avoid delay of these proceedings. Hugh Keith claims that his delay in responding to the motion was on account of late service of the motion by Beverly Beach.

Beverly Beach filed a motion on July 13, 1989, to strike the prefiled testimony and exhibits of Frank Seidman, arguing that such testimony and exhibits are irrelevant to these proceedings. Hugh Keith responded to this motion on July 18, 1989, arguing that the testimony is relevant since it concerns the calculation of contributions-in-aid-of-construction (CIAC) he should have been charged. As the proper amount of CIAC is a key issue in this case, it appears that this testimony is of a relevant nature. Beverly Beach will have ample opportunity to object to any potentially irrelevant testimony by Mr. Seidman at the hearing. Therefore, the Prehearing Officer finds it appropriate to deny Beverly Beach's motion to strike.

On July 26, 1989, Hugh Keith filed a motion for official recognition of a deposition of Sid Patel, taken June 2, 1988, along with related exhibits. Beverly Beach filed an objection on August 3, 1989, arguing that a deposition from another proceeding cannot be officially recognized unless it was actually filed in such other proceeding, citing So. Cal. Funding, Inc. v. Hutto, 438 So2d 426 (Fla. 1st DCA 1983), rev. den. 449 So.2d 265. On October 3, 1989, Hugh Keith filed a response to Beverly Beach's objection, claiming that Beverly Beach misinterpreted the above-cited case. Hugh Keith claims that his delay in responding to the objection was on account of late service by Beverly Beach.

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A deposition is not a matter required to be officially noticed pursuant to Section 90.201 of the Florida Evidence Code, regardless of whether the deposition was filed in another proceeding and the parties and issues were identical. Hugh Keith will have the opportunity at the hearing to attempt to offer pertinent parts of such deposition into evidence or to cross-examine Mr. Patel on the substance of the deposition. Therefore, the Prehearing Officer finds it appropriate to deny Hugh Keith's motion for official recognition of the deposition of Sid Patel, taken June 2, 1988.

On September 15, 1989, Beverly Beach filed a motion for leave to file additional prefiled testimony. Beverly Beach was unable to take Hugh Keith's deposition until September 13, 1989. Beverly Beach, by its motion, requests leave to prefile rebuttal testimony in response to certain matters in Mr. Keith's deposition. Beverly Beach has provided the testimony of Mr. William McGowan for such purpose, filed on October 2, 1989. On October 3, 1989, Hugh Keith filed a response to the motion. The response indicated no objection, other than to limit such additional prefiled testimony to the issue of prudence of investment and to allow Mr. Keith the opportunity to file rebuttal testimony thereto. Hugh Keith claims that his delay in responding to the motion was on account of late service by Beverly Beach. The Prehearing Officer hereby finds it appropriate to grant Beverly Beach's motion for leave to file additional prefiled testimony. Mr. McGowan's testimony shall constitute such additional prefiled testimony. Hugh Keith shall have seven days from this Order date to file rebuttal testimony to Mr. McGowan's testimony.

The prehearing statement of Beverly Beach was filed on September 28, 1989, and the prehearing statement of Hugh Keith was filed on September 29, 1989. The prehearing conference is scheduled for October 11, 1989. Having disposed of the above motions after the prehearing statements have been filed and before the prehearing conference, the need for a continuance is obviated. Therefore, the Prehearing Officer finds it appropriate to deny Beverly Beach's motion for continuance and request for oral argument on the aforementioned motions. It is, therefore,

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that Beverly Beach's motion for continuance and request for oral argument is hereby denied. It is further

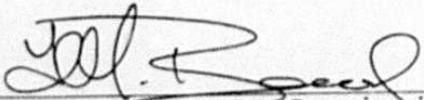
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ORDERED that Beverly Beach's motion to strike the prefiled testimony and exhibits of Frank Seidman is hereby denied. It is further

ORDERED that Hugh Keith's motion for official recognition of the deposition of Sid Patel, taken June 2, 1988, is hereby denied. It is further

ORDERED that Beverly Beach's motion for leave to file additional prefiled testimony is hereby granted. Mr. McGowan's testimony shall constitute such additional prefiled testimony. Hugh Keith shall have seven days from this order date to file rebuttal testimony to Mr. McGowan's testimony.

By Order of Commissioner Thomas M. Beard, as Prehearing Officer, this 9th 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 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

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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.