

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-03-1389-PCO-SU  
ISSUED: December 10, 2003

ORDER GRANTING MOTION TO DISMISS NOLAN

By motion filed October 8, 2003, Island Environmental Utility, Inc. (IEU) requests that Mr. Daniel Nolan (Nolan) be dismissed as an intervenor in this matter. No responses to the motion have been filed. Nolan is a party to this docket, having filed a timely objection to, and request for a hearing on, the application for certificate filed by IEU.

In the motion, IEU argues that it served interrogatories and requests for production of documents (discovery requests) on Nolan on March 24, 2003. Nolan mailed his objections to the discovery requests to IEU on April 16, 2003, after the date for filing such objections had expired. IEU filed a motion to strike Nolan's objections and to compel answers to the discovery requests. The Commission denied IEU's motion to strike Nolan's objections by Order No. PSC-03-0791-PCO-SU, issued July 3, 2003, but directed Nolan to provide IEU with answers to the discovery requests within 30 days of the issuance date of the Order, by August 4, 2003, at the latest. Nolan failed to answer the discovery requests or to otherwise adequately respond within the required time frame.

On August 6, 2003, and September 4, 2003, respectively, IEU filed two more motions to strike Nolan's objections with respect to letters by Nolan dated July 17, 2003, and July 29, 2003, indicating his continued unwillingness to respond to the discovery requests. By Order No. PSC-03-1025-PCO-SU, issued September 17, 2003, the two motions to strike were granted, and Nolan was directed to provide IEU with answers to the discovery requests within 10 days of the issuance date of the Order, by October 6, 2003, at the latest. Nolan again failed to answer the discovery requests or to otherwise adequately respond within the required time frame.

IEU argues that it requires answers to the discovery requests in order to give it a fair and reasonable opportunity to assess the nature and extent of Nolan's claims and to respond to Nolan's objections to IEU's application. Nolan's refusal to answer the discovery requests has prevented IEU from investigating Nolan's objections, assessing the impact of its proposed territory extension on Nolan's interests, preparing a defense to his objections, or structuring reasonable alternatives, all to its detriment. IEU states that it has been prejudiced, and will continue to be prejudiced, in the pursuit of its application by Nolan's failure and refusal to answer the discovery requests.

Further, IEU argues that Nolan's continued failure and refusal to obey the terms of Order Nos. PSC-03-0791-PCO-SU and PSC-03-1025-PCO-SU is purposeful and flagrant. The

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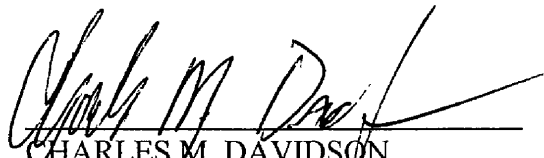
Commission staff have given Nolan assistance in understanding his rights and obligations, as well as tolerance because he is unrepresented. According to IEU, it appears unlikely that Nolan will credibly respond to the discovery requests, or that other sanctions will be sufficient to enforce the Orders, and that an order dismissing Nolan as an intervenor in this matter will be the only method to achieve the objectives of the Orders and to ensure fairness to the other parties to this matter who are willing to comply with the lawful orders of this Commission.

Based upon the foregoing, and being fully advised in the premises, IEU's Motion to Dismiss Nolan as a party to this proceeding is granted. By Order No. PSC-03-1025-PCO-SU, Nolan was 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. Despite that Nolan was ordered to henceforth comply with the orders of this Commission if he is to continue to participate as a party to this proceeding, he has continued to disobey this Commission's orders. As an interested person and potential customer of IEU, Nolan may testify at the customer service hearing, which will be made a part of the record of this case. The customer service hearing is currently scheduled to be held on March 29, 2004, in or around IEU's proposed territory.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that IEU's Motion to Dismiss Nolan as a party to this proceeding is granted. As an interested person and potential customer of IEU, Nolan may testify at the customer service hearing, which will be made a part of the record of this case.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 10th day of December, 2003.

  
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CHARLES M. DAVIDSON  
Commissioner and Prehearing Officer

(SEAL)

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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.