

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of HUGH KEITH against )	DOCKET NO. 890450-WS
BEVERLY BEACH ENTERPRISES, INC. d/b/a )	
BEVERLY BEACH SURFSIDE UTILITY CO. for )	ORDER NO. 21592
overcharge of contributions-in-aid-of- )	
construction in Flagler County )	ISSUED: 7-21-89

ORDER ESTABLISHING PREHEARING PROCEDURE

On March 28, 1989, Hugh Keith filed a complaint against Beverly Beach Enterprises, Inc. d/b/a Beverly Beach Surfside Utility Co. (Beverly Beach) for alleged overcharges of contributions-in-aid-of-construction. On the basis of Mr. Keith's complaint, this matter is currently set for an administrative hearing on October 25, 1989, with a prehearing conference to be held on October 9, 1989.

The scope of this proceeding shall be based upon the issues raised by the parties and the 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 upon 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.

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.

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07365 JUL 21 1989

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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.

Mr. Keith shall prefile an original and 12 copies of all direct testimony and exhibits he intends to sponsor no later than June 23, 1989. Beverly Beach shall prefile an original and 12 copies of all direct testimony and exhibits it intends to sponsor on or before August 7, 1989. Staff shall prefile an original and 8 copies of all direct testimony and exhibits it intends to sponsor, if any, on or before August 25, 1989. All parties shall prefile an original and 12 copies and Staff shall file an original and 8 copies of their rebuttal testimony and associated exhibits on or before September 15, 1989.

A copy of all prefiled testimony and exhibits shall also be mailed to all other parties no later than the date filed 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 September 29, 1989. A copy of the prehearing statement shall also be mailed to all other parties and Staff no later than the date that it is filed with the Commission. The 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;

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(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.

#### Prehearing Conference

A prehearing conference is currently scheduled to be held on October 9, 1989, at 9:30 a.m. in Room 122 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.

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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.

Controlling Dates

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

- 1) Hugh Keith's Prefiled Direct Testimony June 23, 1989
- 2) Beverly Beach's Prefiled Direct Testimony August 7, 1989
- 3) Staff's Prefiled Direct Testimony August 25, 1989
- 4) Prefiled Rebuttal Testimony September 15, 1989

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|---------------------------------|--------------------|
| 5) <u>Prehearing Statements</u> | September 29, 1989 |
| 5) <u>Prehearing Conference</u> | October 9, 1989    |
| 6) <u>Hearing</u>               | October 25, 1989   |

Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 21st day of JULY, 1989.

  
THOMAS M. BEARD, Commissioner  
and Prehearing Officer

( S E A L )

DCS