

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-03-1415-PCO-SU
ISSUED: December 15, 2003

ORDER DENYING MOTIONS TO STRIKE IEU'S OBJECTIONS, GRANTING
BAMFIELD'S MOTION TO COMPEL, GRANTING IN PART AND DENYING IN PART
KOENIG'S MOTION TO COMPEL, AND GRANTING IEU'S MOTION TO COMPEL

On October 3, 2003, Island Environmental Utility, Inc. (IEU) timely filed objections to certain discovery requests propounded on IEU by Mr. Ronald Koenig (Koenig) on September 22, 2003, and by Ms. Linda Bamfield (Bamfield) on September 25, 2003. On October 24, 2003, and November 14, 2003, respectively, Bamfield and Koenig filed motions to strike IEU's objections and to compel answers to their discovery. On October 31, 2003, IEU timely filed a response to Bamfield's motion and a motion to strike her motion to compel in part. On November 6, 2003, Bamfield timely filed a response to IEU's motion to strike. Moreover, on November 10, 2003, Bamfield timely filed objections to the discovery requests propounded on her by IEU on October 30, 2003. On November 12, 2003, IEU filed a motion to compel Bamfield to respond to the discovery requests. No response to the motion has been filed. This order addresses and resolves these discovery disputes.

I. **Dispute Regarding Discovery Propounded by *Pro Se* Litigants**

A. IEU's Objections to Discovery Propounded by *Pro Se* Litigants Bamfield & Koenig

IEU objects to Bamfield's Document Request No. 8, in which she requests IEU to produce "any and all documentation that relates to the financial resources of the principals of IEU including, but not limited to financial statements, preferably certified, showing all assets and liabilities." IEU argues that the personal financial statements of Jack Boyer and Dean Beckstead have been made available for the Commission staff's inspection at IEU counsel's Tallahassee law office. IEU cites to Orders Nos. PSC-99-0756-FOF-WS, issued April 19, 1999, in Docket No. 980731-WS (In Re: Application for certificate to provide water and wastewater service in Charlotte County by Hunter Creek Utilities, LLC) and PSC-01-1483-PAA-WS, issued July 16, 2001, in Docket No. 000545-WS (In Re: Application for original certificates to operate a water and wastewater utility in Pasco County by Labrador Services, Inc.), to support its argument that this procedure is commonly utilized by the Commission regarding personal financial statements.

IEU argues that there is no requirement that such information become public record, and IEU's research has disclosed no Commission decision that required personal financial statements to be turned over to *pro se* litigants. On one occasion, the Commission has required a utility's principal shareholder to produce that shareholder's personal financial statements, but such production was to an attorney. See Order No. PSC-94-1202-PCO-WS, issued September 30,

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2004, in Dockets Nos. 921237-WS and 940264-WS (In Re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by JJ's Mobile Homes, Inc., and Investigation Into Provision of Water and Wastewater Service by JJ's Mobile Homes, Inc. to its Certificated Territory in Lake County). IEU argues that although personal financial statements of a utility's principals may be classified as specified confidential material pursuant to Rule 25-22.006, Florida Administrative Code, where the litigants are *pro se*, such as in the instant case, such confidentiality would be meaningless. Should confidentiality be breached, *pro se* litigants are not subject to the same consequences as are attorneys. According to IEU, the potential damage to the Becksteads and to Mr. Boyer by disclosure of their personal financial information clearly outweighs any need for that information by the *pro se* litigants.

IEU also objects to Koenig's Interrogatory Nos. 8, 24, and 25, and Document Request Nos. 1, 5, 6, and 9, for the above-identified reasons. These discovery requests are similar to Bamfield's Document Request No. 8, in that they seek the disclosure of personal financial information of the individual stockholders of IEU. Moreover, IEU objects to Koenig's Interrogatory Nos. 34 and 35, and Document Request Nos. 12 and 13, in which Koenig requests information as to whether IEU's shareholders, "either individually or as a part of any business enterprise initiated or have been named as a defendant in any lawsuit." According to IEU, this information is irrelevant, immaterial, and not calculated to lead to the discovery of admissible evidence as it relates to the shareholders' involvement with IEU. Further, "as a part of any business enterprise" is ambiguous, and there is no time frame on the request. The shareholders may hold stock in any number of publicly held companies that may have been parties to litigation. IEU points out that Koenig has propounded other interrogatories specifically asking for similar information regarding these shareholders' involvement with other utilities, to which the shareholders are not objecting.

B. Bamfield's Motion to Strike Objections & Compel Discovery

In her Motion to Strike Objections and Compel Discovery, Bamfield argues that IEU is a new company, set up solely for the purpose of obtaining Commission certification to provide wastewater service to a certain new territory, that it is relying on the financial ability of its principal shareholders, and that permanent funding would be based on their financial stability and guaranteed by them.

In a letter dated February 20, 2003, the Commission staff requested that the applicant show its financial ability pursuant to Rule 25-30.033(1)(e), Florida Administrative Code. Such information is an integral part of determining the financial capabilities, stability, and business practices of IEU and its guaranteeing shareholders. Since IEU has not requested confidential business information status, the requested information must be provided.

Bamfield further argues that IEU's argument that *pro se* litigants are not subject to the same consequences as attorneys should confidentiality be breached is without merit. The same

can be said for the applicants once their attorney passes information on to them. Moreover, it is premature for IEU to assume that the personal financial statements of its principals will be classified as confidential material and presumptuous of IEU to assume that if that determination were made, the *pro se* litigants would not abide by the confidentiality requirements.

C. Koenig's Motion to Strike Objections & Compel Discovery

In his Motion to Strike Objections and Compel Discovery, Koenig argues that he finds it hard to believe that his discovery questions, to which IEU objected, are highly unlikely to lead to the discovery of relevant evidence, since most of the questions are the same questions that IEU asked of him. IEU asked Koenig for personal financial information to which Koenig objected. Koenig was instructed to provide the information, and he has complied with that instruction. Koenig argues that he would like to know that this venture is not doomed from the start because of a pending lawsuit, bankruptcy, other debts, or financial difficulties that could make IEU financially unstable. The requested financial information and requests for information relating to any lawsuits involving any business enterprise in which any of IEU's shareholders had an interest relate directly to the financial and technical aptitude of the principals of the company, and may lead to the discovery of admissible evidence. Further, Koenig states that in IEU's response to his discovery requests, IEU advised that various of the requested documents were available for him to view at IEU's offices. Koenig requests that IEU be compelled to send the requested information to him. When IEU wanted a copy of Koenig's tax bill, Koenig did not tell IEU to set an appointment and come to his house to see the documents. He provided a copy in his response to the discovery requests.

D. IEU's Response to Bamfield's Motion to Strike Objections & Compel Discovery and Motion to Strike Bamfield's Motion to Compel in Part

In its response to Bamfield's motion to strike IEU's objections, IEU argues that because Bamfield has not stated any grounds for striking the objections, the motion to strike should itself be stricken. Moreover, IEU moves to strike Bamfield's motion to compel in part, to the extent that Bamfield attempts to compel the discovery of evidence that Koenig has requested. Bamfield's attempt to compel the discovery of such information is improper and violates Rule 1.380, Florida Rules of Civil Procedure.

With respect to Bamfield's motion to compel IEU to respond to her Document Request No. 8, IEU argues that it does not dispute that the personal financial information of its shareholders may be relevant to the Commission's decision whether to issue it a wastewater certificate. IEU will allow such information to be reviewed by the Commission staff if the staff requests such review. Rule 25-30.033, Florida Administrative Code, requires an applicant to provide evidence of its financial ability to the Commission for its evaluation. The rule does not require the production or disclosure of this evidence by the shareholders of the applicant, nor does it require the production of this evidence to the general public or to intervenors, especially

those who are laypersons without the requisite authority to affect the decisions of the Commission. Regarding Bamfield's assertion that while *pro se* litigants are not subject to the same consequences as attorneys should confidentiality be breached, the same can be said for the applicants once their attorney passes information to them, IEU argues that no one has requested Bamfield to provide her personal financial statements. Further, if she were to provide her personal financial statements, Bamfield could request confidential treatment of them, which would prohibit IEU's attorneys from providing such information to its client. IEU argues that confidential status is only requested when and if confidential information is to be produced.

Moreover, IEU argues that Bamfield and her husband have a history of antagonism towards one of IEU's shareholders. Her conduct shows that she is fanatical in her desire to stop further development on the island. She perceives Mr. Beckstead's businesses as being contrary to her desire and has undertaken a course of extremely personal and rabid attacks on him and his family in order to halt his legitimate activities. IEU argues that Bamfield's prior course of conduct and ignorance of the basic principles of law and the rules regulating the activities of this Commission make her highly untrustworthy as a potential discloser of the confidential information that she seeks.

E. Bamfield's Response to IEU's Motion to Strike

Bamfield's response to IEU's motion to strike does not, in fact, respond to the motion to strike. Rather, it is in the nature of a reply to IEU's response to her motion to compel. As such, it will not be considered. The Uniform Rules of Procedure do not authorize a movant to reply to a response to a motion, and this Commission has routinely refused to consider such replies. See Order No. PSC-02-1451-PCO-EQ, issued October 21, 2002, in Docket No. 020898-EQ (In Re: Petition by Cargill Fertilizer, Inc. for permanent approval of self-service wheeling to, from, and between points within Tampa Electric Company's service area).

F. Ruling

1. Bamfield and Koenig Motions to Strike Denied

In their respective motions to strike IEU's objections to their discovery requests, neither Bamfield nor Koenig argue that the objections themselves should be stricken. Rather, they argue why responses to the discovery requests should be compelled over the objections. Moreover, IEU's objections were timely filed within ten days of service of the discovery requests, pursuant to Order No. PSC-02-1611-PCO-SU, issued November 20, 2002, in this docket (Order Establishing Procedure). For these reasons, the motions to strike IEU's objections filed by Bamfield and Koenig are denied.

2. Bamfield's Motion to Compel Granted

As noted in Order No. PSC-03-0791-PCO-SU, issued July 3, 2003, in this docket, Rule 1.280(b)(1), Florida Rules of Civil Procedure, provides that “[i]t is not ground for objection that the information sought [through the process of discovery] will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Such discovery rules are very broad in scope and are to be liberally construed to accomplish their purpose. Amente v. Newman, 653 So. 2d 1030 (Fla. 1995). In Amente, the Florida Supreme Court articulated the established principle that “the concept of relevancy is broader in the discovery context than in the trial context” and that “a party may be permitted to discover relevant evidence that would be inadmissible at trial, so long as it may lead to the discovery of admissible evidence.” See also Davich v. Norman Bros. Nissan, Inc., 739 So. 2d 138 (Fla. 5th DCA 1999); Balas v. Ruzzo, 703 So. 2d 1076 (Fla. 5th DCA 1997), clarified by Balas v. Ruzzo, 703 So. 2d 1076 (Fla. 5th DCA 1998); Jones v. Seaboard Coast Line Railroad Co., 297 So. 2d 861 (Fla. 2d DCA 1974); Murray Van & Storage, Inc. v. Murray, 343 So. 2d 61, (Fla. 4th DCA 1977); 5 Florida Practice Series §10.2, Scope of Discovery (2002).

IEU does not dispute that the financial information sought by Bamfield's Document Request No. 8 may be relevant to the Commission's decision whether to issue it a wastewater certificate. The discovery question at issue is reasonably calculated to lead to the discovery of admissible evidence. As such, the information is discoverable by the party requesting the information, regardless of the fact that the party requesting the information is appearing *pro se*. IEU's reliance on Orders Nos. PSC-99-0756-FOF-WS and PSC-01-1483-PAA-WS is misplaced. In those cases, the personal financial information reviewed by the Commission staff was not requested by a party to the proceeding through the discovery process. In fact, those cases did not go to hearing. Nor does Order No. PSC-94-1202-PCO-WS stand for the proposition that the requested information should not be disclosed to a *pro se* litigant. That Order found that the request for production of a shareholder's personal financial statements was proper and noted that the utility was free to seek confidential treatment for its documents pursuant to Rule 25-22.006, Florida Administrative Code. Accordingly, the utility was ordered to produce the requested financial statements. No apparent consideration was given to the fact that the party requesting the information was represented by counsel. *Id.* at 5.

Based upon the foregoing, and being fully advised on the premises, Bamfield's motion to compel IEU's response to her discovery request is granted. IEU is directed to answer the discovery request within 30 days of the issuance date of this order.

3. Koenig's Motion to Compel Granted in Part and Denied in Part

Koenig's Interrogatory Nos. 8, 24, and 25, and Document Request Nos. 1, 5, 6, and 9, seek personal financial information of IEU's individual stockholders. For the same reasons expressed above with respect to the granting of Bamfield's motion to compel, Koenig's motion

to compel IEU's responses to these discovery requests is granted. IEU is directed to answer these discovery requests within 30 days of the issuance date of this order.

Koenig's Interrogatory Nos. 34 and 35, and Document Request Nos. 12 and 13, request information as to whether IEU's shareholders, "either individually or as a part of any business enterprise initiated or have been named as a defendant in any lawsuit." This information is not likely to lead to the discovery of admissible evidence as it relates to the shareholders' involvement with IEU. It is noted that Koenig has propounded other interrogatories specifically asking for similar information regarding these shareholders' involvement with other utilities. Such interrogatories are reasonably calculated to lead to the discovery of admissible evidence, and IEU has not objected to them.

With respect to Koenig's request for IEU to reproduce all documents requested and to send copies of such documents to him, Rule 1.350, Florida Rules of Civil Procedure, requires IEU to produce the documents by permitting Koenig, as the party making the request, entry upon its property in order to inspect the documents and copy them as necessary. If the documents requested are not voluminous, it is customary practice for parties to provide copies of such documents to each other by mail. IEU is encouraged to follow that customary practice to the extent feasible; however, that practice is not required by law and is not always followed, particularly when the documents requested are voluminous.

For the foregoing reasons, Koenig's motion to compel is granted in part and denied in part, as set forth above. IEU is directed to provide its responses within 30 days of the issuance date of this order.

4. Confidentiality Concerns

This Commission is mindful of the necessity to protect confidential information from public disclosure. As noted in Order No. PSC-03-0791-PCO-SU, the Commission has a process designed to protect a party against the disclosure of confidential information. IEU may seek protection of the financial information requested by Bamfield and Koenig from public disclosure at the hearing pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. IEU is free to require the parties to this proceeding to enter into non-disclosure agreements to maintain the confidentiality of the material prior to providing the requested information to them, in accordance with customary practice. IEU is, of course, also free to take whatever legal action it deems appropriate in the event of a breach of any such agreement.

II. Dispute Regarding Discovery Propounded by IEU

A. Bamfield's Objections to Discovery

Bamfield argues that the relevant questions posed in IEU's First Set of Interrogatories (Nos. 1-64) and First Request for Production of Documents (Nos. 1-48) to her will be addressed as part of her prefiled testimony. Bamfield sees no reason to waste the valuable time of all the parties, and in particular, the Commission staff, with reviewing duplicated information. Bamfield states that she objects and refuses to respond to questions that are not relevant to the instant docket. She summarily states that the nature of many of the discovery requests are intrusive, objectionable, and serve no purpose other than to harass, embarrass, and annoy, and that the questions are irrelevant, immaterial and are not calculated to lead to the discovery of admissible evidence.

B. IEU's Motion to Compel Discovery Served on Bamfield

IEU argues that Bamfield has failed to specify the discovery requests to which she is objecting and the discovery that she considers unrelated to this matter. Bamfield has failed to specify what information she considers "relevant" and will be addressed in her testimony. It is the Commission's right and duty to determine what is relevant and what is not relevant to this matter. Rule 1.280(b)(1), Florida Rules of Civil Procedure, specifically provides that parties may obtain discovery "regarding any matter, not privileged, that is relevant to the subject matter of the action." IEU carefully considered the discovery propounded upon Bamfield and requires the responses in order to accurately and completely address the issues that Bamfield raises in her objections to IEU's application at issue in this case.

IEU further argues that Rule 1.340(a), Florida Rules of Civil Procedure, requires a party to answer each interrogatory separately and fully in writing under oath unless it is objected to, and if a party objects to an interrogatory, the grounds for objection shall be stated. Rule 1.350(b), Florida Rules of Civil Procedure, relating to requests for production of documents, contains similar provisions. Bamfield has not answered any discovery to which she has not objected, nor has she stated the grounds for objecting to any of the discovery to which she has objected, as required by the cited rules.

Finally, IEU argues that it requires answers to the discovery propounded upon Bamfield in order to give it a fair and reasonable opportunity to assess the nature and extent of Bamfield's claims and to respond to her objections to the application. Bamfield's refusal to answer the discovery has prevented IEU from investigating her objections to the application, assessing the impact of its proposed territory extension on her interests, preparing a defense to her objections, or structuring reasonable alternatives, all to its detriment. IEU requests an order compelling Bamfield to fully and completely answer the discovery, as required by the Florida Rules of Civil Procedure.

Bamfield did not file a response to IEU's motion to compel.

C. Ruling

1. IEU's Motion to Compel Granted

Upon consideration of the foregoing and being fully advised on the premises, IEU's motion to compel Bamfield's answers to its discovery requests is granted. That Bamfield may have addressed certain of the discovery requests in her prefiled testimony does not excuse her from her obligation as a party to answer each discovery request propounded upon her, pursuant to the Florida Rules of Civil Procedure. Moreover, upon review of the discovery requests, I find that they are reasonably calculated to lead to the discovery of relevant evidence. Bamfield is directed to answer these discovery requests within 30 days of the issuance date of this order and is reminded to 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 30-day deadline if the responses are served by mail.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that Bamfield and Koenig's motions to strike IEU's objections to their respective discovery requests are denied. It is further

ORDERED that Bamfield's motion to compel IEU's response to her discovery request is granted. IEU is directed to answer the discovery request within 30 days of the issuance date of this order. It is further

ORDERED that Koenig's motion to compel IEU's response to his discovery requests is granted in part and denied in part, as set forth in the body of this order. IEU is directed to provide its responses within 30 days of the issuance date of this order. It is further

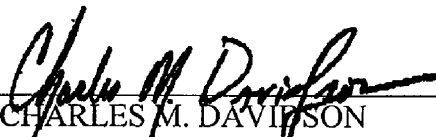
ORDERED that any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. It is further

ORDERED that IEU's motion to compel Bamfield's answers to its discovery requests is granted. Bamfield is directed to answer these discovery requests within 30 days of the issuance date of this order, and is reminded to 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

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Administrative Code, five extra days shall be added to the 30-day deadline if the responses are served by mail.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 15th day of December, 2003.



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.