

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of TOPEKA GROUP, INC. to acquire control of DELTONA CORPORATION'S UTILITY subsidiaries in Citrus, Marion, St. Johns, Washington, Collier, Volusia, and Hernando Counties.	)	DOCKET NO. 881501-WS
	)	
	)	ORDER NO. 21414
	)	ISSUED: 6-19-89
	)	
	)	

ORDER ESTABLISHING PROCEDURE

On November 18, 1988, the Topeka Group, Inc., filed an application to acquire control of Deltona Corporation's utility subsidiaries in Citrus, Marion, St. Johns, Washington, Collier, Volusia, and Hernando Counties. Pursuant to numerous objections filed by substantially-affected parties, this matter is currently set for an administrative hearing on August 30 and 31, 1989.

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

Notice

The Applicant shall give written notice to its customers of the specific date, time, location, and purpose of the formal hearing to be held for this docket. Such hearing notice shall be given in such a manner so as to ensure that its customers receive it no less than fourteen (14) days in advance of the first day of the hearing. First-class mail shall be employed for notices sent to customers with out-of-town mailing addresses.

Informal Preliminary Prehearing Conference

An informal conference of the parties, or the parties' attorneys or other representatives, and Commission Staff shall be held at 9:30 a.m., Wednesday, August 9, 1989, in Room 122, the Fletcher Building, 101 East Gaines Street, in Tallahassee. The purpose of the conference shall be to define the questions of fact, law and policy considered by the parties and Commission Staff to be at issue in this case.

Prehearing Statement

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 August 1, 1989. Commission Staff

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may also file a prehearing statement on that date. Failure of a party to timely file a prehearing statement shall be 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;
- (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 and the party's position on each such 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 therefor.

The original and fifteen copies of each prehearing statement shall be filed with the Division of Records and Reporting on or before the close of business on August 1, 1989. A copy of the prehearing statement shall also be mailed to all other parties no later than its filing with the Commission.

#### 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. Commission Staff may file prefiled testimony in this case. Written testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, each with a sufficient left margin to allow for binding.

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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 utility shall file the original and fifteen copies of its prefiled written testimony and exhibits with the Division of Records and Reporting on or before the close of business on June 27, 1989. Any objector or intervenor shall file the original and fifteen copies of its prefiled written testimony and exhibits on or before the close of business on July 26, 1989.

The original and eight copies of any Staff prefiled direct testimony and exhibits shall be filed with the Division of Records and Reporting on or before the close of business on August 1, 1989.

The original and fifteen copies of all prefiled rebuttal testimony and associated exhibits shall be filed with the Division of Records and Reporting on or before the close of business on August 8, 1989.

A copy of all prefiled testimony and exhibits shall also be mailed to all other parties no later than their filing with the Commission.

#### Parties and Commission Staff

Unless advised in writing of a change in name or address of the parties' representatives, copies of lists of issues, prehearing statements, prefiled testimony and exhibits shall be furnished to Suzanne F. Summerlin, Florida Public Service Commission, Division of Legal Services, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0870, and B. Kenneth Gatlin, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida 32308, and J. Roger Howe, Office of Public Counsel, c/o Florida House of Representatives, The Capitol, Tallahassee, Florida 32399-1300.

#### Prehearing Conference

A prehearing conference will be held at 9:30 AM, Monday, August 14, 1989, in Room 122, 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.

#### 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

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good cause shown. A 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, in fact, the party has acted diligently and in good faith to take a position, and further finds that the party's failure to succeed in taking 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) Each party shall file its prefiled direct testimony and exhibits on or before the following dates:

Applicant - June 27, 1989  
Intervenors - July 26, 1989  
Commission Staff - August 1, 1989

2) Each party shall file its prehearing statement on or before August 1, 1989.

3) Rebuttal testimony, if any, and associated exhibits shall be filed on or before August 8, 1989.

4) An informal preliminary prehearing conference shall be held at 9:30 AM, Wednesday, August 9, 1989, in Room 122, the Fletcher Building, 101 East Gaines Street, Tallahassee.

5) The prehearing conference shall be held at 9:30 a.m., Monday, August 14, 1989, in Room 122, the Fletcher Building, 101 East Gaines Street, in Tallahassee, 101 East Gaines Street, Tallahassee.

6) The formal hearing shall be held on August 30 and 31, 1989, at a time and location to be determined.

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By DIRECTION of Commissioner Thomas M. Beard, as  
Prehearing Officer, this 19th day of JUNE,  
1989.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

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