

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of THREE "S")	DOCKET NO. 881276-SU
DISPOSAL, INC. for a staff-assisted)	ORDER NO. 22519
rate increase in Lee County)	ISSUED: 2-12-90
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
JOHN T. HERNDON

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

The Commission's Proposed Agency Action Order in this staff-assisted rate case was timely protested by the customers who had obtained counsel. On December 26, 1989, the customers filed a Motion to Dismiss and Require Refund. The Motion alleges that the utility did not comply with the procedural order (Order No. 22085, issued October 24, 1989) since it did not file its prefiled direct testimony. The testimony was due November 27, 1989. The order stated that "failure of a party to timely prefile exhibits and testimony . . . may bar admission of such exhibits and testimony."

The customers also allege that the utility continues to operate the plant without proper DER permits and has "continually stonewalled Petitioners [customers] as well as DER's request for them to comply with the local and state enforcements [sic] and regulations. Utility's disregard of the deadline for their testimony is only one example of their continued flagrant behavior and abuse of their franchise rights." The customers request that the case be dismissed, the original rate be reinstated and all revenues collected above the original rate be refunded.

The utility, whose newly obtained counsel filed his appearance on January 5, 1990, did not file a response to the motion. The Motion was served on December 22, 1989; thus the response was due January 3, 1990.

It is true that the utility did not comply with the procedural order. On January 8, 1990, the utility did file its testimony, some six weeks late, along with a Motion to Accept Late-filed Testimony, which will be addressed in a separate order by the Prehearing Officer.

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If we were to grant the customers' Motion to Dismiss, it would be without prejudice. It is very likely that the utility would file another request for rate relief, that the customers would file a protest to our proposed order, and that we would be redoing much of what has already been done in this docket. This would result in increased expenses both for the utility and the customers.

We believe that it is in the best interests of all concerned that we proceed to hearing on this case. This will give the customers the forum they seek in order to put on the record their concerns about the utility's operations and compliance, or lack thereof, with rules and also give the utility its opportunity to present, on the record, its side of the case.

Accordingly, we will deny the Motion to Dismiss. We will issue an amended procedural order setting forth new filing and hearing dates. The prehearing conference and hearing must be rescheduled to give all parties the opportunity to prepare their case. As is our practice, the Commission always encourages parties to attempt to resolve their differences in order to avoid the time and expense of hearing.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the customers' Motion to Dismiss is hereby denied.

By ORDER of the Florida Public Service Commission
this 12th day of FEBRUARY, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.