

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of BCD INDUSTRIES,)	DOCKET NO. 891118-WS
INC. for a staff-assisted rate case in)	ORDER NO. 23013
Osceola County)	ISSUED: 5-31-90
)	

ORDER ESTABLISHING PROCEDURE

On September 7, 1989, BCD Industries, Inc. (BCD) applied for a staff-assisted rate case. Its request was approved by letter dated October 13, 1989. By Order No. 22857, issued April 26, 1990, this Commission proposed to establish increased rates and charges for water and wastewater service. On May 17, 1990, BCD filed a protest to Order No. 22857. Pursuant to BCD's protest, this matter is currently set for an administrative hearing on September 5 and 6, 1990.

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

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay time in discovery.

Notice and Public Information

Pursuant to Rule 25-22.0406(7), Florida Administrative Code, BCD shall provide written notice of the date, time, location, and purpose of the hearing to each of its customers no less than fourteen days prior to the first day of the hearing. The notice shall be approved by Staff, and BCD shall utilize first class mail for notices sent to customers with out of town mailing addresses.

Prefiled Testimony and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code,

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each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding.

Each exhibit which is intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, and identified by his or her initials and a consecutive number beginning with 1. 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 shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

BCD shall prefile an original and 12 copies of all direct testimony and exhibits it intends to sponsor with the Director, Division of Records and Reporting by the close of business on June 14, 1990. Any intervenors in this case shall prefile an original and 12 copies of all direct testimony and exhibits they intend to sponsor by the close of business on July 12, 1990. Staff shall prefile an original and 8 copies of all direct testimony and exhibits it intends to sponsor, if any, by the close of business on July 26, 1990. All parties shall prefile an original and 12 copies and Staff shall prefile an original and 8 copies of all rebuttal testimony and exhibits they intend to sponsor by the close of business on August 2, 1990. A copy of all prefiled testimony and exhibits shall be mailed to all other parties and Staff no later than the date filed with the Commission.

Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, each party shall file a prehearing statement no later than the close of business on August 2, 1990. A copy of the prehearing statement shall be mailed to all other parties and Staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party

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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, 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 therefor.

Prehearing Conference

A prehearing conference will be held in this docket on August 13, 1990, at the Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule

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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 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 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 positions. 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) BCD's direct testimony and exhibits

June 14, 1990

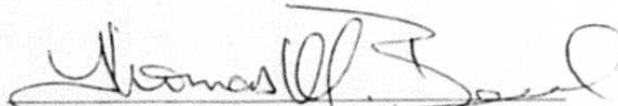
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| 2) <u>Intervenors' direct testimony and exhibits</u> | July 12, 1990 |
| 3) <u>Staff's direct testimony and exhibits, if any</u> | July 26, 1990 |
| 4) <u>Prehearing statements</u> | August 2, 1990 |
| 5) <u>Rebuttal testimony and exhibits</u> | August 2, 1990 |
| 6) <u>Prehearing conference</u> | August 13, 1990 |
| 7) <u>Hearing</u> | September 5 - 6, 1990 |

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 31st day of MAY, 1990.


THOMAS M. BEARD, Commissioner
and Prehearing Officer

(S E A L)

RJP