

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of BCD INDUSTRIES,)	DOCKET NO. 891118-WS
INC. for a staff-assisted rate case)	ORDER NO. 23509
in Osceola County)	ISSUED: 9-18-90
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
GERALD L. GUNTER

ORDER DENYING REQUEST FOR RECONSIDERATION

BY THE COMMISSION:

On September 7, 1989, BCD Industries, Inc. (BCD) filed an application 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 increase rates for wastewater service and decrease rates for water service. On May 17, 1990, BCD filed a timely protest to Order No. 22857. Pursuant to BCD's protest, this case was set for an administrative hearing on September 5 and 6, 1990, with a prehearing conference to be held on August 8, 1990.

By Order No. 23013, issued May 31, 1990, the Prehearing Officer established a schedule to govern the key activities in this case. Pursuant to Rule 25-22.048, Florida Administrative Code, by Order No. 23013, the Prehearing Officer required BCD to prefile any direct testimony and/or exhibits no later than June 14, 1990.

BCD did not prefile its direct testimony and exhibits, or request an extension of time therefor, on or before June 14, 1990. Accordingly, on July 5, 1990, the Staff of this Commission filed a recommendation to dismiss BCD's protest of Order No. 22857. Notice of this item was first sent to BCD by memorandum dated July 6, 1990. Inadvertently, that memorandum incorrectly indicated that the matter would be considered at the July 19, 1990 Agenda Conference. However, an excerpt of the agenda was included with the memorandum, which correctly identified the Agenda Conference date.

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By memorandum dated July 11, 1990, we acknowledged that the Agenda Conference date given in our earlier memorandum was erroneous and instructed all interested persons that the actual date of the Agenda Conference was July 17, 1990.

On July 17, 1990, Thomas E. Chalifoux, Jr., BCD's President, telephoned this Commission. Mr. Chalifoux stated that he had just received our second memorandum that day. He also stated that he wanted an opportunity to address this Commission before we made any decision regarding Staff's recommendation. Mr. Chalifoux, therefore, requested that the item be deferred.

When the BCD item came up for consideration at the July 17, 1990 Agenda Conference, Staff informed us of Mr. Chalifoux's concern. We did not believe that a deferral was appropriate, however, and rejected his request. By Order No. 23227, issued July 19, 1990, we dismissed BCD's protest in accordance with Rule 25-22.042, Florida Administrative Code.

By letter dated July 24, 1990, BCD requested that we reconsider our decision to dismiss its protest. Again, BCD argued that, although Mr. Chalifoux wanted to address this Commission before we rendered a decision on Staff's recommendation, our corrective memorandum did not come to his attention until the day of the Agenda Conference. BCD, therefore, requested that we reconsider Order No. 23327 in accordance with Rule 25-22.060, Florida Administrative Code, so that Mr. Chalifoux might have an opportunity to state his case.

In order to sustain a request for reconsideration, a party must allege that the original decision is based upon some error or omission of fact or law. BCD has made no such allegation; rather, it has merely alleged that Mr. Chalifoux wished to address this Commission and that he did not receive sufficient notice. As discussed above, this is nothing that we did not already know.

Since BCD failed to allege any error or omission of fact or law, its request for reconsideration is denied.

It is, therefore,

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ORDERED by the Florida Public Service Commission that the request for reconsideration filed by BCD Industries, Inc. is hereby denied.

By ORDER of the Florida Public Service Commission,
this 18th day of SEPTEMBER, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

NOTICE OF 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 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.