

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Water Rates)	DOCKET NO. 910658-WU
of BCD Industries, Inc. in Osceola)	ORDER NO. 25146
County for possible overearnings)	ISSUED: 9/30/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL McK. WILSON

ORDER DENYING RECONSIDERATION

BY THE COMMISSION:

BCD Industries, Inc., (BCD or utility) is a Class "C" water and wastewater utility located in Osceola County. The instant proceeding concerns only BCD's provision of water service. BCD's current water rates were established in Order No. 22857, issued April 26, 1990.

By Order No. 24818, issued July 5, 1991, we initiated an investigation of BCD's earnings for water service. Based on the desk audit of BCD's 1990 annual report, it appeared as though BCD was earning an overall rate of return of 29.19%, a rate of return exceeding that which BCD was authorized to earn according to Commission Order No. 22857. During the test year established for the investigation, the twelve-month period ended December 31, 1990, BCD appeared to be overearning by \$17,647 annually.

By Order No. 24818, we authorized BCD to continue charging its existing rates and charges pending the outcome of the investigation, but those rates and charges collected after June 25, 1991, were subject to refund with interest. In addition, BCD was required to file, within thirty days of that Order, security for a potential refund in the form of a bond or letter of credit in the amount of \$12,274 or an escrow account wherein BCD would deposit revenues in excess of \$5,341 per month.

By letter received July 31, 1991, BCD requested a one day extension within which to file a motion for reconsideration. Also by letter received July 31, 1991, BCD asked the Commission to reconsider requiring the escrow of funds.

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Rule 25-22.060, Florida Administrative Code, requires motions for reconsideration to be filed within fifteen days of the issuance of the order. That Rule further indicates that failure to file a timely motion for reconsideration constitutes the waiver of the right to do so. In this instance, the last day upon which BCD could have submitted a motion for reconsideration was July 30, 1991.

Apparently, BCD submitted its letter requesting an extension of time to file for reconsideration by facsimile transmission (fax) on July 30, 1991. BCD followed up this fax by mailing the original letter, which was received on July 31, the same day BCD's motion for reconsideration was received.

We shall consider BCD's motion for reconsideration despite its not being timely filed.

In its motion for reconsideration, BCD asked that the Commission "reconsider requiring BCD Industries to escrow funds which it does not have." As its reason for this request, BCD explains that BCD's "Mid Year Financial Statement . . . indicates we have lost \$25,000 and owe IRS an additional \$22,416.70."

Under the terms of Order No. 24818, BCD was required to file security within thirty (30) days of the date of the Order, August 14, 1991. As noted in the case background, BCD was given the option of filing a bond or a letter of credit or establishing an escrow account. Even if we were to construe BCD's motion for reconsideration to mean that BCD sought reconsideration of the security requirement and not just the escrow option--which would seem to be what BCD intended--we would not reconsider the security requirement.

The purpose of a motion for reconsideration is to bring to the Commission's attention "some point which it overlooked or failed to consider when it rendered its order in the first instance." Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). We do not believe we have overlooked or omitted any fact of law in our decision.

We require security in an overearnings investigation in order to ensure the safety of any potential refund to the utility's customers. BCD's obligations to the IRS or its alleged losses are of no consequence in this regard. Therefore, we hereby deny

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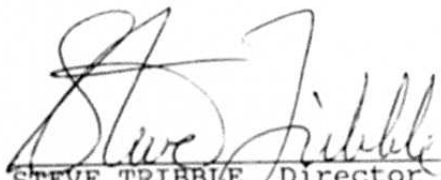
reconsideration of the security requirement. In addition, within ten days of the date of this Order, BCD shall file the security required by Order No. 24818.

It is, therefore

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

ORDERED that BCD Industries, Inc. shall file the security required by Order No. 24818 within ten days of the date of this Order.

By ORDER of the Florida Public Service Commission, this 30th day of SEPTEMBER, 1991.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

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Any party adversely affected by the Commission's 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.