

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of )	DOCKET NO.	881500-WS
Certificates Nos. 362-W and 317-S from )		
BEACON 21 DEVELOPMENT CORPORATION TO )	ORDER NO.	22416
LANIGER ENTERPRISES OF AMERICA, INC. )		
in Martin County )	ISSUED:	1-12-90
)		

ORDER ESTABLISHING PREHEARING PROCEDURE

By Order No. 22203, issued November 21, 1989, this Commission approved the transfer of Certificates Nos. 362-W and 317-S from Beacon 21 Development Corporation to Laniger Enterprises of America, Inc., and proposed to establish rate base as of the date of the transfer. Based upon the protest by the Office of Public Counsel to that portion of Order No. 22203 by which we proposed to establish rate base, this matter has been set for an administrative hearing on May 4, 1990, with a prehearing conference set for April 25, 1990.

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

Prefiled Testimony and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code, 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.

DOCUMENT NUMBER-DATE

00353 JAN 12 1990

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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.

The parties shall prefile an original and 12 copies of their direct testimony and exhibits no later than February 23, 1990. Staff shall prefile an original and 8 copies of its direct testimony and exhibits, if any, on or before March 16, 1990. All parties shall prefile an original and 12 copies and Staff shall prefile an original and 8 copies of their rebuttal testimony and associated exhibits on or before April 6, 1990.

A copy of all prefiled testimony and exhibits shall also be served upon all other parties and Staff no later than the date filed with the Commission.

#### Prehearing Statements

Pursuant to Rule 25-22.038(3), Florida Administrative Code, all parties shall file a prehearing statement no later than April 12, 1990. A copy of the prehearing statement shall also be served upon all other parties and Staff no later than the date that it is filed with the Commission. The failure of a party to timely file a prehearing statement shall constitute 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;

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- (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 is currently scheduled to be held on April 25, 1990, at 9:30 a.m. in Room 122 of the 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.

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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. Any 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 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) Parties' direct testimony due February 23, 1990
- 2) Staff's direct testimony due, if any March 16, 1990
- 3) Rebuttal testimony due April 6, 1990



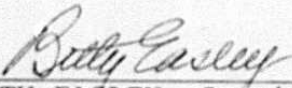
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|-------------------------------------|----------------|
| 4) <u>Prehearing statements due</u> | April 12, 1990 |
| 5) <u>Prehearing conference</u>     | April 25, 1990 |
| 6) <u>Hearing</u>                   | May 4, 1990    |

Based upon the foregoing, it is

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 12th day of JANUARY, 1990.

  
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BETTY EASLEY, Commissioner  
and Prehearing Officer

( 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.