

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)	DOCKET NO. 910655-WU
Florida Public Service Commission)	ORDER NO. 25172
regulation for provision of water)	ISSUED: 10/08/91
service in Broward County by H2Oulton)	
Metering Systems, Inc.)	
)	

ORDER ESTABLISHING PROCEDURE

Pursuant to the protest filed by to H2Oulton Metering Systems, Inc. (H2Oulton), issued September 6, 1991, this matter is currently set for an administrative hearing.

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

The hearing in this docket is presently set for Monday, February 17, 1992. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by Monday, February 10, 1992. In addition, to facilitate their identification, all interrogatories, requests for admissions, and requests for production of documents shall be numbered consecutively. Each set of discovery requests shall be numbered sequentially from any previous set(s). Unless authorized by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 75, and requests for admissions, including subparts, shall be limited to 30.

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.

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

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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.

An original and 12 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting by the close of business (4:45 p.m.) on the date due. 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, a prehearing statement shall be required of all parties in this docket. Commission Staff will also file a prehearing statement. 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 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;

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- (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 and the party's position on each such 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 therefore.

Prehearing Conference

A prehearing conference will be held in this docket at 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.

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

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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) H2Oulton's direct testimony
and exhibits | December 9, 1991 |
| 2) Intervenors' direct testimony
and exhibits | January 13, 1992 |
| 3) Staff's direct testimony
and exhibits, if any | January 13, 1992 |
| 4) Prehearing statements | January 27, 1992 |
| 5) Rebuttal testimony
and exhibits | January 27, 1992 |
| 6) Prehearing conference | February 7, 1992 |
| 7) Hearing at a time and
location to be determined | February 17, 1992 |

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Based upon the foregoing, it is

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

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 8th day of OCTOBER, 1991.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

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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.