

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show) DOCKET NO. 920695-WS
cause proceedings against BCD) ORDER NO. PSC-92-1126-FOF-WS
INDUSTRIES, INC. in Osceola) ISSUED: 10/06/92
County for failure to remit)
penalty fee for filing)
delinquent 1990 annual report.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BCD Industries, Inc. (BCD or utility), is a Class C utility, serving 7 water and 6 wastewater customers in Osceola County. BCD has not timely filed its 1990 annual report, as required by Rule 25-30.110, Florida Administrative Code.

Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31st each year to file an annual report on or before March 31st of the following year. Requests for extension must be in writing and must be filed before March 31st. One extension of 30 days is automatically granted. Longer extensions may be granted upon showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30-day grace period in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(a)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. The penalty calculation is based on the number of days elapsed since March 31st, or the approved extension date, and the actual date of filing. The date of filing is included in computing the number of days elapsed. This Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

DOCUMENT NUMBER-DATE

11634 OCT -6 1992

EDSC-RECORDS/REPORTING

BCD's 1990 annual report was due on March 31, 1991, but it was not received until April 25, 1991. On February 4, 1992, we mailed a certified letter to Mr. Thomas Chalifoux, Jr., which indicated a penalty of \$75 would be due for a delinquency of 25 days at \$3 per day. In the letter, we requested that the \$75 fine be paid on or before March 5, 1992. To date, BCD has failed to make a payment.

However, by letter received February 17, 1992, Mr. Chalifoux requested that the penalty for filing late be waived due to his involvement in the Gulf War crisis which caused him to be away from the office for a length of time. We certainly commend Mr. Chalifoux for serving his country. However, Mr. Chalifoux was notified on January 21, 1991, that he was ordered to active duty, but no request for an extension to file the 1990 annual report was made. Further, Mr. Chalifoux's presence was not required to complete the annual report. Ms. Carolyn Chalifoux, wife of Thomas Chalifoux and Vice-President of the utility, was responsible for the daily operations of the utility. Therefore, we do not believe that the penalty should be waived in the instant case.

In consideration of the foregoing, it appears that BCD has failed to comply with the 1990 annual report filing requirements, and is in violation of Rule 25-30.110, Florida Administrative Code. Therefore, we hereby order BCD to show cause in writing, within twenty days, why it should not be fined for its failure to timely submit the 1990 annual report, in violation of Rule 25-30.110, Florida Administrative Code.

If the utility fails to respond in writing to the show cause within twenty days of the issuance of Order, the penalty of \$75 shall be imposed without further action by this Commission. The failure of the utility to file a timely response to this show cause order shall constitute both an admission of the facts alleged and a waiver of any right to a hearing.

If BCD fails to respond to reasonable collection efforts by this Commission, we deem the fine to be uncollectible and hereby authorize referral of this matter to the Comptroller's office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection efforts by this Commission would not be cost effective. Reasonable collection efforts shall consist of two certified letters requesting payment.

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If, however, the utility responds to the show cause by remitting the \$75 penalty, no further action is required.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that BCD Industries, Inc., in Osceola County, shall show cause, in writing, within twenty days, why it should not be fined \$75 for failure to file its 1990 annual report as required in Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that BCD Industries, Inc.'s written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 26, 1992. It is further

ORDERED that BCD Industries, Inc.'s response must contain specific allegations of fact and law. It is further

ORDERED that BCD Industries, Inc.'s opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), Florida Administrative Code. It is further

ORDERED that a failure to file a timely response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that in the event that BCD Industries, Inc. files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that if BCD Industries, Inc. fails to file a timely response to this show cause order, the fine of \$75 shall be imposed, pursuant to Rule 25-30.110, Florida Administrative Code. It is further

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ORDERED that if reasonable collection efforts are unsuccessful, the collection of the fine shall be forwarded to the Comptroller's Office and this docket shall be closed. It is further

ORDERED that if the utility responds to the show cause by remitting the penalty, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 6th day of October, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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