

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of portion of water territory to Osceola County, transfer of remaining water and wastewater facilities to City of Kissimmee, and cancellation of Certificates Nos. 122-W and 89-S held by BCD Industries, Inc. in Osceola County.

DOCKET NO. 961265-WS
ORDER NO. PSC-98-0022-FOF-WS
ISSUED: January 5, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER ACKNOWLEDGING TRANSFER OF A PORTION OF BCD INDUSTRIES, INC.'S TERRITORY TO OSCEOLA COUNTY, AND TRANSFER OF THE REMAINING FACILITIES TO THE CITY OF KISSIMMEE, CANCELLING CERTIFICATES NOS. 122-W AND 89-S, AND CLOSING DOCKET

BY THE COMMISSION:

Background

BCD Industries, Inc., (BCD or utility) is a Class C utility serving approximately 8 water and 7 wastewater general service customers in Osceola County just west of Disney World. The utility's 1996 annual report on file with the Commission lists combined annual revenues of \$155,299 and a net operating loss \$24,849.

The utility was granted Certificates Nos. 122-W and 89-S by Order No. 5655 issued on February 20, 1973, in Docket No. C-73026-WS. By Order No. 7864, issued on June 24, 1977, in Docket No. 770345-W, the Commission granted the utility an amendment of its water certificate to include territory in another part of the

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county. At the time of the amendment, there were no customers in the area. Although BCD apparently built a water system to serve the area, it is unclear who then owned the system.

Control of BCD was transferred from Mr. James P. Haker to Mr. Thomas E. Chalifoux, Jr., in 1984 when he acquired 48 acres of land, including the utility facilities. On May 11, 1988, an application was filed with the Commission for approval of the transfer of majority control of BCD from Mr. Haker to Mr. Chalifoux. Docket No. 880678-WS was opened to process the application. In the application, Mr. Chalifoux requested deletion of the territory granted by Order No. 7864, which had never been served by BCD. Order No. 20023, issued in Docket No. 880678-WS, approved the transfer but did not address the territory deletion.

On March 4, 1996, BCD filed an application for transfer of its water and wastewater facilities to the City of Kissimmee (Kissimmee) and for cancellation of Certificates Nos. 122-W and 89-S. Docket No. 960274-WS was opened to process the application. On October 14, 1996, a joint request was filed by Kissimmee and BCD to withdraw the application until the sales contract could be consummated, and the docket was closed.

During the review of the application, we discovered that the utility's water certificate could not be canceled due to the existence of the additional territory granted by Order No. 7864. The application for transfer to Kissimmee did not include this territory.

On October 21, 1996, BCD filed an application to delete the additional territory, pursuant to Section 367.045, Florida Statutes. The instant docket was opened to process BCD's application. Upon review of the application, it was determined that it was more accurately a transfer to a governmental authority since the territory is now being served by Osceola County as a result of a decision by the Ninth Judicial Circuit Court in Osceola County. This will be discussed later in the Order.

On March 19, 1997, BCD resubmitted its application for approval of the transfer of the remaining facilities to Kissimmee. The two applications were combined to simplify cancellation of the certificates.

Acknowledgment of Transfer to Osceola County

As discussed previously, the utility's original water and wastewater service territory was granted by Order No. 5655, issued in Docket No. C-73026-WS on February 20, 1977. On June 24, 1977, BCD was granted additional territory by Order No. 7864 in Docket No. 770345-W. Majority control of the utility was transferred to Mr. Thomas E. Chalifoux, Jr., by Order No. 20023, issued on September 19, 1988, in Docket No. 880678-WS.

In the application for transfer, Mr. Chalifoux correctly identified the utility's service territory as that granted by Orders Nos. 5655 and 7864. Mr. Chalifoux then requested a deletion of the territory granted by Order No. 7864. The request for deletion was apparently overlooked in processing the application for transfer. Because no legal description was attached to Order No. 20023, and there were no interim filings affecting the utility's territory, the error was not discovered until BCD filed the application for transfer of its facilities and territory to Kissimmee (Docket No. 960274-WS).

In March of 1992, prior to the application for deletion, the Commission became aware of the existence of a water system serving the subdivisions of Marina Club Estates (Marina Club) and Sunny Lake Estates (Sunny Lake) through notification from the City of St. Cloud that electric service to the utility would be discontinued for nonpayment of service. At the time, the Commission was not aware that this was a part of BCD's service area. The Commission staff and the Department of Environmental Protection (DEP) attempted to determine the ownership of the water system and its jurisdictional status. The system had been in existence since 1976 but neither the system operator at the time (Mr. Ivan Dory), nor the developer (Marina Club Estates, Inc.), nor the construction company (BCD Industries, Inc.) would or could claim ownership.

For a period of time, the homeowners association made arrangements for interim operations of the water system. Eventually the land upon which the water plant was situated was bought at a public auction by Mr. Walter Medlin. Mr. Medlin offered the homeowners a long-term lease for the land but, because the homeowners did not own the plant, they refused the offer. Mr. Medlin's corporation then refused to control the water system since the corporation had only acquired title to the land, not the plant. Further, Mr. Medlin's corporation indicated that it would pursue

ejection proceedings at which time both the Commission and DEP took action.

The Commission opened Docket No. 941292-WU to resolve the long-standing questions of utility ownership and jurisdictional status. DEP filed a Complaint for a Declaratory Judgment and Other Relief in the Ninth Judicial Circuit Court in Osceola County against those persons thought at one time or another to be responsible for the water plant. The complaint included Mr. Chalifoux as the current President of BCD. In Case No. CI94-0769, DEP requested that the Circuit Court establish the identity of the "supplier(s) of water of the drinking water system."

After comprehensive settlement meetings to resolve all issues among the parties, the Osceola County Commission enacted a resolution creating a municipal service benefit unit which allowed the County to assess the lot owners of Marina Club and Sunny Lakes for the provision of water service by the County. Because Osceola County is exempt from Commission regulation, Docket No. 941292-WU was closed on July 14, 1995, by Order No. PSC-95-0840-FOF-WU. The Circuit Court issued its final summary judgment approving the settlement agreement on June 13, 1996.

In processing BCD's request to transfer its facilities to Kissimmee in Docket No. 960274-WS, we discovered that the territory at issue in Docket No. 941292-WU and Case No. CI94-0769 has apparently always been certificated to BCD. By that time, though, Osceola County had been determined to be the service provider and the Commission had acknowledged the County's operation.

Application for Acknowledgment of
Transfer to Osceola County

On October 21, 1996, BCD filed an application for deletion of the portion of its water territory being served by Osceola County, pursuant to Section 367.045, Florida Statutes. The application identified the territory proposed to be deleted as that granted by Order No. 7864 on June 24, 1997, in Docket No. 770345-W. A description of the territory is shown on Attachment A of this Order, which by reference is incorporated herein. The utility furnished the following statement specifying the reason for the proposed deletion and identifying the alternative source of service:

The above territory is not being service by BCD INDUSTRIES, INC. since I have owned BCD Industries starting in 1984 to the present. The area is currently being serviced by Osceola County.

We were at first uncertain as to whether BCD needed to file a deletion of territory or a transfer to a governmental authority to remove the unserved territory from its water certificate. Upon review of the application, however, it was determined that it was more accurately an application for transfer to a governmental authority. The information supplied with BCD's application for a partial deletion of territory, in this case, applies as well to a partial transfer to governmental authority pursuant to Rules 25-30.037(4) and (5), Florida Administrative Code. The document provided in lieu of a sales agreement was the June 13, 1996, Final Summary Judgment Approving Settlement in Circuit Court Case No. CI94-0769. In the judgment, the Court granted, and parties were bound by, the terms of the settlement agreement dated March 5, 1996. As part of that agreement, BCD agreed to pay Osceola County \$2,000 to defray county expenses relating to the water system and to convey by Quit Claim deed to Osceola County any rights, title, liens, encumbrances or other interests in the water system including all related plant, equipment, easements and property.

BCD stated in its application that it never had any active connections within the territory proposed to be transferred to Osceola County and, therefore, income and expense statements relating to the water system, customer deposits and interest, regulatory assessment fees and systems map would not be applicable. Revised territory maps and tariff sheets were provided showing the remaining territory. The application was also accompanied by the appropriate filing fee for a territory deletion. However, a transfer to governmental authority requires no filing fee.

In view of the foregoing, we find that the transfer of the territory shown on Attachment A of this Order to Osceola County is in the public interest and it is acknowledged. We further find it appropriate to refund the \$200.00 filing fee paid by BCD with its application for deletion of territory.

Application for Acknowledgment of Transfer to
the City of Kissimmee

As discussed previously, on March 4, 1996, in Docket No. 960274-WS, Mr. Chalifoux filed an application for transfer of BCD's water and wastewater facilities to the City of Kissimmee and for the cancellation of Certificates Nos. 122-W and 89-S. On October 14, 1996, a joint request from the City of Kissimmee and BCD was filed to withdraw the application until the sales contract could be consummated and Docket No. 960274-WS was administratively closed. On March 19, 1997, after the issues relating to the contract had been resolved, BCD resubmitted its application to transfer a portion of its territory to the City of Kissimmee.

BCD's application is in compliance with Rules 25-30.037(4) and (5), Florida Administrative Code, for a partial transfer to a governmental agency. A copy of the Agreement for Sale and Purchase was included with the application. The contract, as revised, was approved by the City of Kissimmee at its January 28, 1997, City Commission Meeting and was executed by both parties on January 31, 1997. The closing occurred in April of 1997. The actual transfer date, which is contingent upon the construction of a wastewater interconnection between BCD and the City of Kissimmee, has not yet occurred and BCD is still providing service. When the connection is made, title will be conveyed and the City of Kissimmee will take over operations. The agreed-upon purchase price was \$540,000 in cash along with a water and wastewater allocation of 15,000 gallons per day for BCD's properties in the territory. The contract contains a severability provision if, for any reason, the agreement is declared unlawful or invalid by a court of competent jurisdiction.

In addition, the contract requires, upon closing, that BCD turnover to the City of Kissimmee all deposits and interest. BCD was also required to notify all customers in writing of the amount of the deposit plus interest being transferred. BCD agreed to pay all regulatory assessment fees for 1996 and regulatory assessment fees for 1997 will be paid out of closing proceeds. We have verified that BCD's 1996 regulatory assessment fees have been paid and there are no outstanding penalties or fines.

Pursuant to Rule 25-30.037(5), Florida Administrative Code, the application identified the remaining territory as that granted by Order No. 7864 on June 24, 1997, in Docket No. 770345-W (See Attachment A). For clarity, the portion of BCD's service territory

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being transferred to Kissimmee is shown on Attachment B of this Order, which by reference is incorporated herein.

In view of the foregoing, we find that the transfer of BCD's water and wastewater facilities to the City of Kissimmee is in the public interest and it is acknowledged. We further find it appropriate to cancel Certificates Nos. 122-W and 89-S. BCD has not returned Certificates Nos. 122-W and 89-S to the Commission for cancellation because they have been unable to locate them.

Based on the foregoing, it is

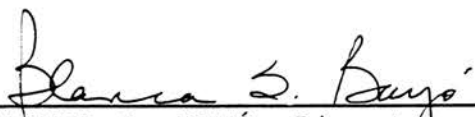
ORDERED by the Florida Public Service Commission that the transfer of the territory shown on Attachment A of this Order from BCD Industries, Inc., 1254 South Bermuda Avenue, Kissimmee, Florida 34741, to Osceola County, is hereby acknowledged. It is further

ORDERED that the transfer of the territory shown on Attachment B of this Order from BCD Industries, Inc. to the City of Kissimmee (Department of Water Resources), 1100 North Main Street, Suite A, Kissimmee, Florida, 34744-4283, is hereby acknowledged. It is further

ORDERED that BCD Industries, Inc. shall return Certificates Nos. 89-S and 122-W to the Commission within 20 days of the date of this Order for cancellation. It is further

ORDERED that Docket No. 961265-WS is hereby closed.

By ORDER of the Florida Public Service Commission this 5th day of January, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater 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.

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ATTACHMENT A

BCD INDUSTRIES, INC.
TERRITORY EXTENSION GRANTED BY ORDER NO. 7864
(WATER CERTIFICATE ONLY)

OSCEOLA COUNTY

Township 25 South, Range 31 East
Section 8

Commence at intersection of the South boundary of said Section 8 and the Westerly right-of-way line of State Road 15 as it is now constructed; thence North 34 degrees 48 minutes East, 1280 feet more or less along said boundary to a POINT OF BEGINNING, said point being the intersection of said Westerly right-of-way line of State Road 15 and the South Westerly boundary line of Marina Club Estates as recorded in Plat Book 2, page 150 of the Public Records of Osceola County; thence North 55 degrees 12 minutes West, 2185.2 feet to the shoreline of Fells Cove of Lake Tohopekaliga; thence Northeasterly along said shoreline 402 feet more or less to a point on the Northeasterly boundary of said Marina Club Estates; thence South 55 degrees 12 minutes East, 2045.2 feet to a point; thence South 34 degrees 48 minutes West, 400 feet to the POINT OF BEGINNING.

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ATTACHMENT B

BCD INDUSTRIES, INC.
ORIGINAL TERRITORY GRANTED IN ORDER NO. 5655
(WATER AND WASTEWATER CERTIFICATE)

OSCEOLA COUNTY

Township 25 South, Range 27 East
Section 5

The West 1/2 of the Northeast 1/4, less the North 100 feet thereof.

The Northeast 1/4 of the Northeast 1/4, less the North 100 feet and less the East 346.13 feet thereof.

The Southeast 1/4.

Township 25 South, Range 27 East
Section 8

The Northwest 1/4 of the Northeast 1/4.