

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of THREE "S")	DOCKET NO. 881276-SU
DISPOSAL, INC. for a staff-assisted)	ORDER NO. 22602
rate increase in Lee County)	ISSUED: 2-26-90
)	

ORDER ACCEPTING LATE-FILED TESTIMONY

On January 8, 1990, Three "S" Disposal, Inc. (utility) filed a Motion to Accept Late-Filed Testimony that was due on November 27, 1989. The basis of the motion is that the late-filing was caused by "inexplicable and unavoidable delays" encountered by the utility in receiving requested documents from this Commission. "The documentation was requested to assist the utility in the filing of its prefiled direct testimony, and was not received by the utility until a second request was made in late December, 1989." The utility further alleges that the Petitioners (customers) have not been prejudiced by the delay and the late-filing will not affect the hearing date.

The customers did not file a response to the motion. The customers had filed, however, a Motion to Dismiss and Require Refund on December 26, 1989. In that Motion, the customers stated, among other things, that the utility had failed to file its testimony as required by the Procedural Order.

Order No. 22085, issued October 24, 1989, set forth the procedural requirements of this docket and stated on page 4 that the utility's prefiled direct testimony was due on November 27, 1989. I am informed by staff counsel that at the preliminary prehearing conference held with all parties on October 24, 1989 by telephone, the procedural dates were also discussed as well as the type and content of testimony anticipated to be filed. On November 3, 1989, staff counsel sent an example of prefiled testimony to the utility at its official address of record. The materials were not returned by the Postal Service, nor did the utility telephone staff to enquire about them when the filing deadline approached or passed. On December 15, 1989, staff counsel telephoned the utility to inquire about its not filing testimony and was informed the materials had not been received. The materials were sent again on that date to the official address of record. On December 22, 1989, the utility called staff counsel to state that the materials had not been received. The materials were sent again, but this time with a different zip code provided by the utility. Under Commission rules, the utility is obliged to keep this Commission apprised of its current address. On December 26, 1989, the utility called

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staff counsel to state the materials had been received. On January 2, 1990, staff counsel was contacted by the utility's newly acquired legal counsel. The testimony was filed January 5, 1990 as previously stated.

The utility must bear responsibility to comply with Commission rules and orders. However, as was stated by the Commission in Order No. 22519, in which the customers' Motion to Dismiss was denied:

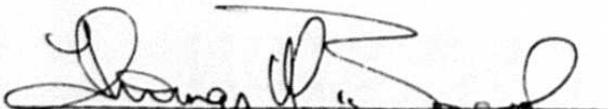
We believe that it is in the best interests of all concerned that we proceed to hearing on this case. This will give the customers the forum they seek in order to put on the record their concerns about the utility's operations and compliance, or lack thereof, with rules and also give the utility its opportunity to present, on the record, its side of the case

Accordingly, the Prehearing Officer will grant the Motion to Accept Late-Filed Testimony, but admonishes the utility to abide by the requirements of Order No. 22085 and Order No. 22559, the Revised Procedural Order.

Based on the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that the Motion to Accept Late-Filed Testimony, filed by Three "S" Disposal, Inc., is hereby granted.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 26th day of FEBRUARY, 1990.


THOMAS M. BEARD, 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.