

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of DEBARY)	DOCKET NO. 890792-WS
ASSOCIATES, INC. for staff-assisted)	ORDER NO. 22716
rate case in Volusia County)	ISSUED: 3-21-90
_____)	

ORDER ESTABLISHING PREHEARING PROCEDURE

On June 13, 1989, DeBary Associates, Inc. (DeBary) filed an application for a staff-assisted rate case. Its application was approved by letter dated July 10, 1989.

By Order No. 22569, issued February 19, 1990, this Commission proposed to establish increased rates for water and wastewater service.

On March 12, 1990, the Office of Public Counsel (OPC) filed a protest to Order No. 22569. Pursuant to OPC's protest, this case is set for an administrative hearing on June 25 and 26, 1990, with a prehearing conference to be held on June 4, 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

Pursuant to Rule 25-22.034, Florida Administrative Code, discovery for this proceeding may be obtained generally in accordance with Rules 1.280 through 1.400, Florida Rules of Civil Procedure. However, due to the highly complex and technical nature of this proceeding, interrogatories shall not be limited to thirty. In addition, 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.

DOCUMENT NUMBER-DATE

02556 MAR 21 1990

FPSC-RECORDS/REPORTING

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Notice

DeBary shall provide notice to its customers as set forth in Rule 25-22.0406(7), Florida Administrative Code.

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.

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.

DeBary shall prefile an original and 12 copies of its direct testimony and exhibits no later than April 12, 1990. All intervenors shall prefile an original and 12 copies of their direct testimony and exhibits on or before May 10, 1990. Staff shall prefile an original and 8 copies of its direct testimony and exhibits, if any, on or before May 24, 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 May 31, 1990.

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.

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Prehearing Statements

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket on or before May 24, 1990. A copy of the prehearing statement shall also be mailed to 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;

(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

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(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 is currently scheduled to be held on June 4, 1990, at 1:30 p.m. in Room 115 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.

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

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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

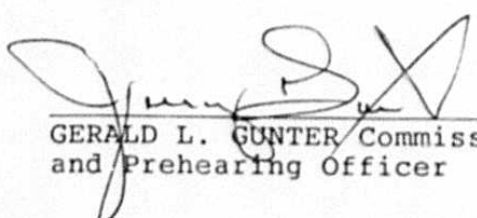
The following dates have been established to govern the key activities of this case.

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|--|--------------------|
| 1) <u>Utility's direct testimony due</u> | April 12, 1990 |
| 2) <u>Intervenors' direct testimony due</u> | May 10, 1990 |
| 3) <u>Staff's direct testimony due, if any</u> | May 24, 1990 |
| 4) <u>Rebuttal testimony due</u> | May 31, 1990 |
| 5) <u>Prehearing statements due</u> | May 24, 1990 |
| 6) <u>Prehearing conference</u> | June 4, 1990 |
| 7) <u>Hearing</u> | June 25 & 26, 1990 |

Based upon the foregoing, it is

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

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 21st day of MARCH, 1990.



 GERALD L. GUNTER, Commissioner
 and Prehearing Officer

(S E A L)

RJP