

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Transfer
of Certificates Nos. 404-W and
341-S in Orange County from Econ
Utilities Corporation to
Wedgefield Utilities, Inc.

DOCKET NO. 960235-WS

In re: Application for Amendment
of Certificates Nos. 404-W and
341-S in Orange County by
Wedgefield Utilities, Inc.

DOCKET NO. 960283-WS
ORDER NO. PSC-97-0952-PHO-WS
ISSUED: August 11, 1997

Pursuant to Notice, a Prehearing Conference was held on August 4, 1997, in Tallahassee, Florida, before Commissioner Joe A. Garcia, as Prehearing Officer.

APPEARANCES:

Ben E. Girtman, Esquire, 1020 East Lafayette Street,
Suite 207, Tallahassee, Florida 32301-4552
On behalf of Wedgefield Utilities, Inc.

Jack Shreve, Esquire and Charles Beck, Esquire, Office of
Public Counsel, c/o The Florida Legislature, 111 West
Madison Street, Suite 812, Tallahassee, Florida 32399-
1400
On behalf of the Citizens of the State of Florida

Jennifer S. Brubaker, Esquire and Bobbie L. Reyes,
Esquire, Florida Public Service Commission, 2540 Shumard
Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On February 27, 1996, Wedgefield Utilities, Inc. (Wedgefield or utility) filed an application for the transfer of Certificates Nos. 404-W and 341-S from Econ Utilities Corporation (Econ) to

DOCUMENT NUMBER-DATE

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FPS-C-RECORDS/REPORTING

Wedgfield. On March 5, 1996, Wedgfield filed an application for amendment of Certificates Nos. 404-W and 341-S to include additional territory in Orange County. In Order No. PSC-96-1241-FOF-WS, issued October 7, 1996, this Commission, by final agency action, approved the transfer and granted the amendment of the certificates to include the additional territory requested. By that same Order, the Commission, by proposed agency action, established rate base for purposes of the transfer.

The Office of Public Counsel timely protested the Order, and accordingly, by Order No. PSC-96-1533-PCO-WS, issued December 17, 1996, this matter was scheduled for an April 29, 1997 hearing in Orange County. By Order No. PSC-97-0070-PCO-WS, issued January 22, 1997, the matter was continued, and the hearing rescheduled for August 19, 1997.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is

defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

III. POST-HEARING PROCEDURES

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes

the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Carl Wenz	Wedgfield	1, 2, 3, 4, 5, 6, 7, 8, 9
Hugh Larkin, Jr.	OPC	1, 2, 3, 4, 5, 6, 7, 8
Kathy Welch	Staff	5
<u>Rebuttal</u>		
Frank Seidman	Wedgfield	1, 2, 3, 4, 5, 6, 7, 8, 9

VI. BASIC POSITIONS

WEDGEFIELD: The rate base for the purposes of this transfer is \$1,462,487 and \$1,382,904, for the water and wastewater systems, respectively. In accordance with established Commission policy, no acquisition adjustment should be included in the rate base calculation. The purchaser has not requested any such adjustment, and there are no extraordinary circumstances to warrant it.

CITIZENS: The Commission should use the actual amount paid by Wedgfield Utilities, Inc. as the utility's rate base. The predecessor company providing service (Econ Utilities Corporation) had no regular preventative maintenance program in effect and conducted repairs and maintenance only on an emergency basis. The lack of maintenance is reflected in the condition of the assets purchased by Wedgfield Utilities, Inc. For example, there

are significant infiltration problems with the system, and there is severe corrosion at the wastewater treatment facility. The purchase price paid by Wedgefield Utilities, Inc., for the assets of Econ Utilities Corporation reflects the lack of maintenance conducted on the system. Customers will be saddled with additional capital costs and maintenance costs in the future to make up for the years of neglect by the predecessor company. Providing Wedgefield a rate base equal to what it paid for the utility is fair to the company and to customers. Providing Wedgefield a rate base more than five times what it paid for the utility is unfair to customers and provides an unearned windfall to Wedgefield.

STAFF:

A review of prefiled testimony and discovery indicates at this point that the utility was not operating in violation of any DEP standards. Further it appears that there are no extraordinary circumstances warranting rate base inclusion of an acquisition adjustment. Non-testifying staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VII. ISSUES AND POSITIONS

ISSUE 1: What was the condition of the assets sold to Wedgefield Utilities, Inc.?

POSITIONS

WEDGEFIELD: The assets were all functioning and not in violation of any state regulations. They were not in the best of condition, but were not in extremely poor condition, either. (Wenz, Seidman)

CITIZENS: The poor condition of the assets reflects the lack of a preventative maintenance program. For example, significant infiltration problems exist

with the system, and there is severe corrosion at the wastewater treatment facility. (Larkin)

STAFF: The assets were in fair condition, and the utility was not operating in violation of any DEP standards.

ISSUE 2: Was Econ Utilities Corporation a "troubled" utility?

POSITIONS

WEDGEFIELD: Yes. It was financially troubled, having sustained cumulative net losses in excess of \$4 million over the most recent eight year period and lacked either the means or commitment to invest in future capital needs or future maintenance. (Wenz, Seidman)

CITIZENS: The company was not a "troubled" utility. The company met standards by providing maintenance on an emergency basis. (Larkin)

STAFF: The term "troubled" is unclear. Econ had the operational and managerial capacity to provide service, although its financial capacity was questionable. In any case, financial difficulty is not sufficient reason alone for rate base inclusion of an acquisition adjustment.

ISSUE 3: Are there any extraordinary circumstances which warrant an acquisition adjustment to rate base, and if so, what are they?

POSITIONS

WEDGEFIELD: No. There are no extraordinary circumstances and there should be no acquisition adjustment. (Wenz, Seidman)

CITIZENS: Yes, the vast disparity between Econ's net book value for the plant and Wedgefield's purchase price, and the poor condition of the assets, are extraordinary circumstances. (Larkin)

STAFF: No, there are no extraordinary circumstances that warrant rate base inclusion of an acquisition adjustment.

ISSUE 4: How should the Commission treat the contingent portion of the purchase price for rate base purposes?

POSITIONS

WEDGEFIELD: It has no effect on rate base. (Wenz, Seidman)

CITIZENS: The contingent portion of the purchase price should be recognized only if and when actual payments are made. In addition, the decision whether to recognize any of the contingent payments should be reviewed after the utility begins serving the area known as The Commons. If provision of service to this area increases the cost to provide water or wastewater service to existing customers, the contingent payments should not be recognized in rate base. (Larkin)

STAFF: The contingent payment should be recognized when the contingent payment is made.

ISSUE 5: What is the net book value for the water and wastewater systems?

POSITIONS

WEDGEFIELD: As of the date of transfer, the net book values for the water and wastewater systems are \$1,462,487 and \$1,382,904, respectively. (Wenz, Seidman)

CITIZENS: The net book value carried on the books of Econ Utilities Corporation as of December 31, 1995, was \$2,845,391. (Larkin)

STAFF: As of the date of transfer, the net book values for the water and wastewater systems are \$1,462,487 and \$1,382,904, respectively. (Welch)

ISSUE 6: Should a negative acquisition adjustment be included in the rate base determination, and if so, what is the appropriate amount?

POSITIONS

WEDGEFIELD: No, a negative acquisition adjustment is neither appropriate nor authorized in this case. (Wenz, Seidman)

CITIZENS: Yes, a negative acquisition adjustment should be included in rate base. The negative acquisition adjustment is \$2,300,391, calculated by subtracting the actual cash purchase price of \$545,000 from the net book value of \$2,845,391 carried on the books by Econ Utilities Corporation. (Larkin)

STAFF: No, rate base inclusion of a negative acquisition adjustment is not appropriate.

ISSUE 7: What is the rate base for the water and wastewater systems, for the purposes of this transfer?

POSITIONS

WEDGEFIELD: The rate base amount should match the net book value of the acquired assets. Wedgefield accepts the results of the Staff Audit that the rate base for the purposes of this transfer is \$1,462,487 and \$1,382,904, for the water and wastewater systems, respectively. (Wenz, Seidman)

CITIZENS: The rate base should be the acquisition price of \$545,000. (Larkin)

STAFF: The rate base amount should match the net book value of the acquired assets, or \$1,462,487 and \$1,382,904, for the water and wastewater systems, respectively.

ISSUE 8: Who bears the burden of proving whether an acquisition adjustment should be included in the rate base?

POSITIONS

WEDGEFIELD: In accordance with Commission Order No. 23376 issued 8/21/90 and Order No. 25729 issued 2/17/92, the proponent of an acquisition adjustment, either negative or positive, bears the burden of proof. OPC is the only proponent of an acquisition adjustment in this case and, therefore, OPC alone bears the burden of proof. (Wenz, Seidman)

CITIZENS: The utility should bear the burden of justifying why its actual investment should not be used for rate base. (Larkin)

STAFF: Rate base inclusion of an acquisition adjustment changes rate base and will ultimately affect the utility's rates. While the burden of going forward with the evidence as to the issue of rate base inclusion of an acquisition adjustment may shift in any particular case, the ultimate burden of proof remains on the applicant utility.

ISSUE 9: Must extraordinary circumstances be shown in order to warrant rate base inclusion of an acquisition adjustment?

POSITIONS

WEDGEFIELD: Yes. The Commission must comply with its own Order No. 23376 issued 8/21/90 and its Order No. 25729 issued 2/17/92, which confirmed the requirements for an acquisition adjustment. The requirements are that "Absent extraordinary circumstances, the purchase of a utility system at a premium or discount shall not affect rate base." The Commission developed these requirements on a case-by-case basis since at least 1983. Subsequently, hearings were held in generic proceedings directed only at determining what requirements there should be for acquisition adjustments; extensive testimony and evidence were received by the Commission; and

the requirements were set forth in Orders of the Commission. Therefore, the Commission may not now deviate from its requirements that extraordinary circumstances must be shown before an acquisition adjustment is warranted, and extraordinary circumstances must be shown in this case before an acquisition adjustment is warranted. (Wenz, Seidman)

CITIZENS: No, extraordinary circumstances need not be shown, although such circumstances exist in this case. The Commission has no rule regarding acquisition adjustments, nor any rule requiring a showing of extraordinary circumstances.

STAFF: Yes, extraordinary circumstances must be shown to exist in order to warrant a rate base inclusion of an acquisition adjustment. However, extraordinary circumstances are a factual determination which can only be made on a case-by-case basis.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Carl Wenz	Wedgfield	_____ (CW-1)	Application for Transfer of Certificate and Facilities of Econ Utilities Corporation to Wedgfield Utilities, Inc., filed February 21, 1996 [Commission Document No. 02377, February 27, 1996].

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Hugh Larkin, Jr.	OPC	_____ (HL-1)	Schedules
Kathy Welch	Staff	_____ (KLW-1)	Audit Report

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

The parties and staff have agreed that the following stipulations are reasonable and should be accepted by the Commission.

1. Wedgefield Utilities, Inc., paid cash of \$545,000 for the utility's assets. In addition, it agreed to make contingent payments equal to every other service availability charge in the area known as The Commons if and when it is developed.
2. There are no objections to entering the exhibit entitled "Acquisition Feasibility Analysis of Econ Utilities Corporation," dated June 1995 and prepared under the control and supervision of Alan B. Ispass, Director, Orange County Utilities, into the record as a stipulated exhibit.
3. The applicant utility has not requested rate base inclusion of any acquisition adjustment.

X. PENDING MOTIONS

1. Wedgefield's Verified Petition and Suggestion of Disqualification, filed on August 1, 1997, was pending at the time of the prehearing conference.

XI. RULINGS

1. At the prehearing conference, staff's oral recommendation that proposed issues 10 and 11 be stricken was approved.

It is therefore,

ORDERED by Commissioner Joe A. Garcia, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Joe A. Garcia, as Prehearing Officer, this 11th day of August, 1997.



JOE A. GARCIA

Commissioner and Prehearing Officer

(S E A L)

JSB

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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 wastewater 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.