

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

AUGUST 22, 1996

TO: DIRECTOR OF RECORDS AND REPORTING

FROM: DIVISION OF WATER AND SEWER (WALKER) *WAW*
DIVISION OF LEGAL SERVICES (CROSBY) *MO*

RE: DOCKET NO. 960235-WS - APPLICATION FOR TRANSFER OF
CERTIFICATE NOS. 404-W AND 341-S IN ORANGE COUNTY FROM
ECON UTILITIES CORPORATION TO WEDGEFIELD UTILITIES, INC.

DOCKET NO. 960283-WS - APPLICATION FOR AMENDMENT OF
CERTIFICATES NOS. 404-W AND 341-S IN ORANGE COUNTY BY
WEDGEFIELD UTILITIES, INC.

AGENDA: SEPTEMBER 3, 1996 - REGULAR AGENDA - PROPOSED AGENCY
ACTION FOR ISSUES NOS. 2 and 3 - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\960235.RCM

DOCUMENT NUMBER-DATE
08908 AUG 22 1996
FPSC-RECORDS/REPORTING

CASE BACKGROUND

Econ Utilities Corporation (Econ or utility) is a Class B Utility that provides water and wastewater service for about 725 customers in Orange County. In 1995, Econ recorded operating revenues of \$210,666 for water service and \$317,000 for wastewater service. During 1995, Econ reported that operating losses of \$63,680 for water service and \$95,430 for wastewater service were incurred.

On February 27, 1996, Mr. Carl J. Wenz, Vice President of Regulatory Matters for Wedgefield Utilities, Inc. (Wedgefield) filed an application for the transfer of Certificates Nos. 404-W and 341-S from Econ Utilities Corporation to Wedgefield. Wedgefield was incorporated on January 23, 1996, as a Florida corporation, and is a wholly-owned subsidiary of Utilities, Inc., a corporation based in Illinois. The final closing date for this transaction is scheduled to take place within ten (10) days of Commission approval of the proposed transfer. An interim closing occurred on February 8, 1996, at which time various operating records and ownership documents were exchanged. Wedgefield has provided interim management of the utility system since the interim closing, subject to this Commission's approval of the proposed transfer.

On March 5, 1996, Wedgefield filed an application for permission to add three parcels to the utility's current service territory: a) the Shopping Center, b) the Bancroft Boulevard area, and c) the Commons. Econ is already serving the Shopping Center and the Bancroft Boulevard properties. The Commons is a planned community of 400 single family homesites.

Econ has been serving the shopping center and some homes in the Bancroft Boulevard area for about fifteen years. Reportedly, those areas were inadvertently omitted when the utility filed the legal description for its initial service area. Therefore, the utility is technically in violation of Section 367.045, Florida Statutes, for failure to secure Commission approval prior to extending its territory to serve the shopping center and the Bancroft Boulevard area. Issue 7 addresses the utility's apparent violation of Section 367.045, Florida Statutes.

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DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Water Certificate No. 404-W and Sewer Certificate No. 341-S from Econ Utilities Corporation to Wedgefield Utilities, Inc. be approved?

RECOMMENDATION: Yes, the transfer should be approved. Wedgefield should be required to file evidence that it owns the land upon which its facilities are located within 60 days. (WALKER)

STAFF ANALYSIS: Except as discussed herein, the application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer of certificate. The application contains a check in the amount of \$3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers of the system to be transferred. No objections to the notice of application have been received and the time for filing such has expired.

The applicant has not provided evidence that the utility owns the land upon which the utility's facilities are located, as required by Rule 25-30.037(1)(o), Florida Administrative Code. Instead, the applicant included a commitment for title insurance with respect to the subject parcels. Therefore, the utility should be required to provide a recorded warranty deed or other proof that it owns the land upon which its facilities are located within 60 days of the date of the order issued as a result of action taken at this agenda conference.

A description of the territory served by the utility is appended to this memorandum as Attachment A.

We believe the public interest is served by approving the proposed transfer. As previously stated, Wedgefield is a wholly-owned subsidiary of Utilities, Inc. (UI), which was formed in 1965, and today provides water and wastewater service for about 150,000 customers in thirteen states including Florida. Through its subsidiaries, UI provides water and/or sewer service to approximately 30,000 customers throughout Florida. UI focuses on

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ownership and operation of small systems, and provides centralized management, accounting, and financial assistance for small utilities that were commonly built by development companies. Troubled and often undercapitalized, the acquired utilities are able to benefit from UI's superior technical and financial capabilities. With its extensive operating experience and financial resources, UI will assist Wedgefield in meeting its regular and emergency operating conditions, including compliance with environmental regulations. We believe Wedgefield has the technical and financial capacity that is essential to assure quality service for this community.

We have contacted the Department of Environmental Protection (DEP) concerning Econ's compliance status regarding any outstanding Notices of Violation or any DEP consent order. We were informed that Econ Utilities Corporation is not subject to any currently outstanding Notices of Violation or consent orders. However, Wedgefield reported in its application that an engineering study of the water and wastewater system conducted in 1995 indicated that several improvements would soon be needed to maintain regulatory compliance and adequate service. Based upon preliminary engineering estimates, Wedgefield reported about \$160,000 was budgeted for a new well and water softener. In addition, about \$249,000 was budgeted to improve the utility's percolation, equalization, and irrigation systems for the wastewater system.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and the liabilities assumed. Pursuant to a Memorandum of Closing Agreements, executed at the interim closing date (February 8, 1996), Wedgefield acknowledged that certain current and accrued assets and liabilities were part of the acquisition agreement and would be honored by the purchaser. This included an \$18,030 provision for customer deposits, a \$2,475 fee owed to the Public Service Commission, \$3,389 for accrued vacation pay, and \$2,906 for accrued property taxes subject to any post-closing proration.

Based on the above, staff recommends that the transfer of Water Certificate No. 404-W and Sewer Certificate No. 341-S from Econ Utilities Corporation to Wedgefield Utilities, Inc. is in the public interest and should be approved. Econ reported that it conducted a thorough search of its files but was unable to locate the original certificates. Accordingly, replacement certificates will be prepared and issued to Wedgefield. As noted above, Wedgefield should be required to file proof that it owns the

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treatment plant sites within 60 days.

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ATTACHMENT A

ECON UTILITIES CORPORATION

TERRITORY DESCRIPTION

PER ORDER NO. 12315

THE FOLLOWING DESCRIBED LANDS LOCATED IN PORTIONS OF SECTIONS
1 AND 12, TOWNSHIP 23 SOUTH, RANGE 32 EAST, ORANGE COUNTY,
FLORIDA:

SECTION 1

THE SW 1/4 OF SAID SECTION 1 AND THE SE 1/4 OF SAID SECTION 1
LESS AND EXCEPT THAT PORTION LYING NE OF SR 520.

SECTION 12

THE NORTH 1/2 OF SAID SECTION 12.

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ISSUE 2: What is the rate base of Econ Utilities Corporation at the time of transfer?

RECOMMENDATION: The rate base, which for transfer purposes reflects the net book value, is \$1,462,487 for the water system and \$1,382,904 for the wastewater system. (WALKER)

STAFF ANALYSIS: According to the application, the applicant's proposed net book value for the combined water and wastewater system was \$2,930,836 as of December 31, 1994. This amount matches the rate base balance proposed by the Commission's audit staff for 1994. The applicant's books and records were audited during an undocketed investigation to determine whether Econ's earnings were excessive, as alleged by some customers. The investigation was concluded upon verification that Econ was actually incurring operating losses. Among the adjustments proposed for the 1994 period were: a) removal of unauthorized AFUDC charges; b) reclassifying expenses that should have been charged to plant in service or construction work-in-progress; c) adjustments to reflect adoption of guideline depreciation rates and amortization charges; and d) various adjustments required by prior Commission decisions. In all, eleven audit adjustments were proposed and, as noted above, the utility adopted each of these adjustments.

The utility's rate base was last formally established by this Commission in Docket No. 840368-WS, a rate application filed by Econ in 1984. According to Order No. 15459, issued in that docket on December 18, 1985, Econ's rate base as of June 30, 1984 was \$236,777 for the water system and \$422,507 for the wastewater system. Substantial used and useful reductions were required in that docket.

The applicant's records were audited by the Commission staff for this proceeding to determine the rate base (net book value) as of December 31, 1995. Using the audited balances for the calendar year ended December 31, 1994, the auditors proposed the following rate base determinations as of December 31, 1995: \$1,462,487 for the water division and \$1,382,904 for the wastewater division. The audited values do not include used and useful reductions.

Staff's recommended rate base calculations for the water and wastewater divisions are attached as Schedule No. 1 and Schedule No. 2, respectively. Since Econ had adopted all of the proposed audit adjustments in the overearnings review case, and amended its accounting accordingly, there are no further audit corrections for this proceeding. Based on the balances set forth herein, staff

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recommends that rate base for Econ Utilities Corporation be established as \$1,462,487 for the water system and \$1,382,904 for the wastewater system as of December 31, 1995. This rate base calculation is used purely to establish the net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

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SCHEDULE NO. 1

ECON UTILITIES CORPORATION
SCHEDULE OF WATER RATE BASE
AS OF 12/31/95

<u>DESCRIPTION</u>	<u>Balance per Utility</u>	<u>Adjustment</u>	<u>Balance per Staff</u>
Utility Plant in Service	\$2,615,949	\$0	\$2,615,949
Land	2,007	0	2,007
Accumulated Depreciation	(727,428)	0	(727,428)
CIAC	(554,441)	0	(554,441)
Accumulated Amortization	126,400	0	126,400
Totals	<u>\$1,462,487</u>	<u>\$0</u>	<u>\$1,462,487</u>

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SCHEDULE NO. 2

ECON UTILITIES CORPORATION
SCHEDULE OF WASTEWATER RATE BASE
AS OF 12/31/95

<u>DESCRIPTION</u>	<u>Balance per</u> <u>Utility</u>	<u>Adjustment</u>	<u>Balance per</u> <u>Staff</u>
Utility Plant in Service	\$3,997,599	\$0	\$3,997,599
Land	96,500	0	96,500
Construction Work In Progress	330,893	0	330,893
Accumulated Depreciation	(1,926,905)	0	(1,926,905)
CIAC	(1,560,842)	0	(1,560,842)
Accumulated Amortization	<u>445,659</u>	<u>0</u>	<u>445,659</u>
Totals	<u>\$1,382,904</u>	<u>\$0</u>	<u>\$1,382,904</u>

ISSUE 3: Should a negative acquisition adjustment be approved?

RECOMMENDATION: No, the \$1,700,391 negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (WALKER)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation. In this proceeding, the original construction cost (\$2,845,391) exceeds the initial purchase price (\$545,000) and an anticipated future payment. This future consideration concerns paying every other service availability charge from a new development area to the seller. Known as the Commons, the new development area is a planned community of 400 lots reserved for single family homes.

Pursuant to the purchase agreement, 50% of expected proceeds from service availability charges for the Commons will be paid to Econ as future consideration for the purchased assets. However, this transfer should not diminish the amount of Contributions in Aid of Construction (CIAC) that the utility should record for ratemaking purposes. Since development of the Commons area seems probable, our calculation of the acquisition adjustment includes a provision for projected CIAC equal to 50% of the payments in the Commons area. Based upon the utility's current plant capacity charges (\$750 for water and \$2,250 for wastewater), the added consideration would total \$600,000. Initially, the difference between the original cost amount and the purchase price will be credited to the acquisition adjustment account. Subsequently, as CIAC payments are conveyed to the seller, the appropriate entry will be a credit to CIAC and an offsetting debit to the acquisition adjustment account.

The acquisition adjustment resulting from the transfer of Econ Utilities Corporation is calculated as follows:

Staff Calculated Rate Base:	\$2,845,391
Purchase Price:	545,000
Provision for Transferred CIAC	<u>600,000</u>
Negative Acquisition Adjustment:	\$1,700,391

The purchase agreement also provides for increasing the purchase price to include any current and/or accrued customer

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accounts receivable balances and reducing the price for all assumed liabilities. Review of the interim closing statement disclosed that the opposing debits and credits were not material and were nearly offsetting. One of the assumed credits was an \$18,030 provision for customer deposits. For the purpose of defining the approximate acquisition adjustment balance, the slight difference between the current assets and assumed liabilities is disregarded.

In the absence of extraordinary circumstances it has been Commission policy that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. Although the original construction cost is much larger than the purchase price, substantial used and useful adjustments have been employed in Econ's previous rate applications. For example, in Docket No. 840368-WS, Econ's reported investment for its combined water and wastewater systems was \$3,103,373, but the approved rate base amount was \$659,284, and a substantial share of the reduction was due to used and useful corrections. In Docket No. 871208-WS, a case that was ultimately settled through a stipulation, Econ's requested rate base amount was \$745,593 for its combined water and wastewater systems, staff's recommended amount was \$564,340, and both sums included substantial used and useful reductions. Considering the likely impact of used and useful adjustments for this utility system, the circumstances in this exchange do not appear to be extraordinary. Therefore, we recommend that a negative acquisition adjustment should not be included in the calculation of rate base.

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ISSUE 4: Should Wedgefield Utilities, Inc. adopt and use the rates and charges approved by this Commission for Econ Utilities Corporation?

RECOMMENDATION: Yes, Wedgefield Utilities, Inc. should continue charging the rates and charges approved for this utility system. (WALKER)

STAFF ANALYSIS: The utility's approved rates and charges were effective January 13, 1995 pursuant to administrative order WS-94-0261. These tariff changes were implemented pursuant to a rate index application.

Rule 25-9.044(1), Florida Administrative Code, provides that:

"In cases of change of ownership or control of a utility which places the operation under a different or new utility...the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)..."

Wedgefield Utilities has not requested a change in the rates and charges of the utility, nor is staff aware of any reason to change them at this time. Accordingly, staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a tariff reflecting the transfer of ownership. Staff will approve the tariff filing effective for services provided or connections made after the stamped approval date.

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ISSUE 5: Should the application of Wedgefield Utilities, Inc. for amendment of Water Certificate No. 404-W and Sewer Certificate No. 341-S be granted?

RECOMMENDATION: Yes, Wedgefield Utilities, Inc. should be granted the additional territory described in Attachment B. (WALKER, CROSBY)

STAFF ANALYSIS: On March 5, 1996, Wedgefield filed an application for amendment of the water and wastewater certificates to include additional territory in Orange County. Except as discussed herein, the application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains a check in the amount of \$2,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The applicant has not provided evidence that it owns the land upon which the utility's facilities are located, as required by Rule 25-30.036(1)(d), Florida Administrative Code, since the transfer of the utility to Wedgefield has not yet occurred. Issue 1 addresses the transfer of certificates to Wedgefield (Docket No. 960235-WS). Therefore, Wedgefield should be required to file a recorded warranty deed within 60 days of the date of the order issued as a result of the action taken at this agenda conference.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(1)(e), (f) and (i), Florida Administrative Code. A description of the territory requested by the utility is appended to this memorandum as Attachment B. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. No objections to the notice of application have been received and the time for filing such has expired.

Wedgefield proposes to add three parcels of land to the currently authorized territory. The areas are hereinafter referred to as (a) the Shopping Center, (b) the Bancroft Boulevard property, and (c) the Commons. At the present time, Econ is providing service to customers in the shopping center and the Bancroft Boulevard properties. According to Econ, technical errors in the

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original description of the service area resulted in inadvertent omission of the shopping center and Bancroft Boulevard parcels when the original certificate was granted. The Commons area is currently undeveloped, but about 400 single family homesites are planned for this area. According to the applicant, there are no other municipal or private utilities in the area that could possibly serve these customers in the foreseeable future. We believe Wedgefield has shown that it possesses the technical and financial capability needed to serve the expanded service area.

Wedgefield reported that it believes service to these areas will be consistent with the water and wastewater sections of the local comprehensive plan. The applicant provided notice of the proposed expansion of territory to the East Central Florida Planning Council. That agency did not protest the proposed expansion of the service area. The utility serves a remote residential community in eastern Orange County (the Wedgefield development). According to the application, Orange County entered into territorial agreements (Sewer Contract No. S-85-4 and Water Contract No. W-87-05) granting the utility the right to expand its service area to include any or all remaining portions of the Wedgefield development. As noted in Issue 1, staff recommends that Wedgefield, and its parent company, have the technical and financial ability to serve the territory.

Based on the above information, staff recommends it is in the public interest to grant the application of Wedgefield Utilities, Inc. for amendment of Certificates Nos. 404-W and 341-S. These certificates will be modified to include the expansion areas described in this recommendation. Further, Wedgefield has filed revised tariff sheets that reflect amendment of the territory description.

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ATTACHMENT B

WEDGEFIELD UTILITIES, INC.

TERRITORY DESCRIPTION

The following described lands located in portions of Sections 2 and 11, Township 23 South, Range 32 East, Orange County, Florida:

SHOPPING CENTER

All that portion of the southeast quarter of Section 1, Township 23 South, Range 32 East, lying northeasterly of State Road 520 in Orange County, Florida.

BANCROFT BOULEVARD PROPERTY

In Sections 2 and 11, Township 23 South, Range 32 East.

The row of lots located immediately west of Bancroft Boulevard, beginning at the north boundary of Section 2, Township 23 South, Range 32 East, and running south to where the north boundary of the Florida Power and Light 160 foot power line easement crosses Bancroft Boulevard in Section 11, Township 23 South, Range 32 East.

More particularly described as follows:

Lots 1 through 6, Block 19A, Cape Orlando Estates, Unit 1, Orange County, Florida, being more particularly described as follows: Commence at the west quarter corner of Section 1, Township 23 South, Range 32 East, Orange County, Florida; thence run south 89° 48' 20" west. A distance of 53 feet to the northeast corner of Lot 6, Block 19A, Rocket City, Unit 1. According to the plat thereof, as recorded in Plat Book Z, pages 29 through 31, of the public records of Orange County, Florida. Said point being the point of beginning; thence run south 00° 02' 32" east. Along the east line of said Block 19A, said line also being the platted west right-of-way line of Bancroft Boulevard. Said line also being parallel to the platted west line of the southwest quarter of said Section 1, a distance of 501 feet to the southeast corner of Lot 1, said Block 19A; thence run south 89° 48' 20" west along the south line of said Block 19A. Said line also being the platted north right-of-way line of Majestic Street, a distance of 125 feet; thence run north 00° 02' 32" west, 501 feet to the northwest corner of said Lot 6; thence run north 89° 48' 20" east, along the north line of said Lot 6, a distance of 125 feet to the point of beginning.

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Lots 1 through 9, Block 29A, Cape Orlando Estates, Unit 1, Orange County, Florida, being more particularly described as follows: commence at the west quarter corner of Section 1, Township 23 South, Range 32 East; Orange County, Florida. According to the plat of Rocket City, Unit 1, as recorded in Plat Book Z, pages 29 through 31, of the public records of Orange County, Florida; thence run south $00^{\circ} 02' 32''$ east, along the platted west line of the southwest quarter of said section 1, said line also being the platted centerline of Bancroft Boulevard, a distance of 561 feet; thence run south $89^{\circ} 48' 20''$ west, 53 feet to the northeast corner of Lot 1, said Block 29A, said point also being the point of beginning; thence run south $00^{\circ} 02' 32''$ east, along the east line of said Block 29A, said line also being the platted west right-of-way line of Bancroft Boulevard, a distance of 730 feet to the southeast corner of Lot 9, said Block 29A; thence run south $89^{\circ} 48' 20''$ west, along the south line of said Lot 9, Block 29A, a distance of 125 feet; thence run north $00^{\circ} 02' 32''$ west, 730 feet to the northwest corner of said Lot 1, Block 29A; thence run north $89^{\circ} 48' 20''$ east, along the north line of said Lot 1, a distance of 125 feet to the point of beginning.

Lots 10 through 15, Block 29A, Cape Orlando Estates, Unit 1A, Orange County, Florida, being more particularly described as follows: commence at the west quarter corner of Section 1, Township 23 South, Range 32 East, Orange County, Florida, according to the plat of Rocket City, Unit 1, as recorded in Plat Book Z, pages 71 through 83, of the public records of Orange County, Florida, thence run south $00^{\circ} 02' 32''$ east along the platted west line of the southwest quarter of said Section 1, said line also being the platted centerline of Bancroft Boulevard, a distance of 1291 feet; thence run south $89^{\circ} 48' 20''$ west, 53 feet to the northeast corner of Lot 10, said Block 29A, said point also being the point of beginning; thence run south $00^{\circ} 02' 32''$ east. Along the east line of said Block 29A, said line also being the platted west right-of-way line of Bancroft Boulevard, a distance of 530.42 feet to the southeast corner of Lot 15, said Block 29A; thence run west along the south line of said Lot 15, Block 29A, a distance of 125 feet; thence run north $00^{\circ} 02' 32''$ west, 530 feet to the northwest corner of said Lot 10, Block 29A; thence run south $89^{\circ} 48' 20''$ east, along the north line of said Lot 10, Block 29A, a distance of 125 feet to the point of beginning.

Lots 1 through 15, Block 68, Cape Orlando Estates, Unit 1A, Orange County, Florida, being more particularly described as follows: commence at the west quarter corner of Section 1, Township 23 South, Range 32 East, Orange County, Florida, according to the plat

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of Rocket City, Unit 1A, as recorded in Plat Book Z, pages 71 through 73, of the public records of Orange County, Florida; thence run south $00^{\circ} 02' 32''$ east, along the platted west line of the southwest quarter of said section 1, said line also being the platted centerline of Bancroft Boulevard, a distance of 1881.60 feet; thence run south $89^{\circ} 48' 20''$ west, 53 feet to the northeast corner of Lot 1, said Block 68, said point also being the point of beginning; thence run south $00^{\circ} 02' 32''$ east, along the east line of said Block 68, said line also being the platted west right-of-way line of Bancroft Boulevard, a distance of 760.63 feet; thence run south $00^{\circ} 02' 03''$ east, along said platted west right-of-way line, a distance of 499.39 feet to the southeast corner of Lot 15, said Block 68; thence run west along the south line of said Lot 15, a distance of 125 feet; thence run north $00^{\circ} 02' 03''$ west 498.98 feet; thence run north $00^{\circ} 02' 03''$ west 761.04 feet to the northwest corner of said Lot 1, Block 68; thence run east along the north line of said Lot 1, Block 68, a distance of 125 feet to the point of beginning.

Lots 1 through 6, Block 74, Cape Orlando Estates, Unit 1A, Orange County, Florida, being more particularly described as follows: commence at the northeast corner of Section 11, Township 23 South, Range 32 East, Orange County, Florida, according to the plat of Rocket City, Unit 1A, as recorded in Plat Book Z, pages 71 through 73, of the public records of Orange County, Florida; thence run south $89^{\circ} 46' 34''$ west, along the north line of the northeast quarter of said Section 11, a distance of 53 feet to a point of the west right-of-way line of Bancroft Boulevard; thence run south $00^{\circ} 20' 03''$ east along said west right-of-way line, a distance of 605.39 feet to the northeast corner of Lot 1, Block 74, said Rocket City, Unit 1A; said point also being the point of beginning; thence continue south $00^{\circ} 20' 03''$ east along said west right-of-way line, a distance of 560.01 feet to the southeast corner of Lot 6, said Block 74; thence run west along the south line of said Lot 6, a distance of 125 feet; thence run north $00^{\circ} 20' 03''$ west, along the west line of said Block 74, a distance of 560.01 feet; thence run east 125 feet to the point of beginning.

Lots 1 through 14, Block 70, Cape Orlando Estates, Unit 1A, Orange County, Florida, being more particularly described as follows: commence at the northeast corner of Section 11, Township 23 South, Range 32 East, Orange County, Florida, according to the plat of Rocket City, Unit 1A, as recorded in Plat Book Z, pages 71 through 73, of the public records of Orange County, Florida; thence run south $89^{\circ} 46' 34''$ west along the north line of the northeast quarter of said Section 11, a distance of 53 feet to a point on the

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west right-of-way line of Bancroft Boulevard; thence run south 00° 20' 03" east along said west right-of-way line, a distance of 1225.40 feet to the northeast corner of Lot 1, Block 70, said Rocket City, Unit 1A, said point also being the point of beginning; thence continue south 00° 20' 03" east along said west right-of-way line, a distance of 1131.57 feet to the southeast corner of Lot 14, said Block 70; thence run south 89° 52' 12" west, along the south line of said Lot 14, a distance of 125 feet; thence run north 00° 20' 03" west, along the west line of said Block 70, a distance of 1131.85 feet; thence run east 125 feet to the point of beginning. Lots 1 and Tract A, Block 72, Cape Orlando Estates, Unit 1A, Orange County, Florida, being more particularly described as follows: commence at the northeast corner of Section 11, Township 23 South, Range 32 East, Orange County, Florida, according to the plat of Rocket City, Unit 1A, as recorded in Plat Book Z, pages 71 through 73, of the public records of Orange County, Florida; thence run south 89° 46' 34" west along the north line of the northeast quarter of said Section 11, a distance of 53 feet to a point on the west right-of-way line of Bancroft Boulevard; thence run south 00° 20' 03" east, along said west right-of-way line, a distance of 2416.97 feet to the northeast corner of Lot 1, Block 72, said Rocket City, Unit 1A, said point also being the point of beginning; thence continue south 00° 20' 03" east, along said west right-of-way line, a distance of 125 feet to the southeast corner of said Lot 1, Block 72; thence run south 89° 52' 12" west, along the south line of said Block 72, a distance of 125 feet; thence run north 00° 20' 03" west, along the west line of said Block 72, a distance of 125 feet; to the point of beginning.

Lots 1 and 39 and Tracts A, B, C, Block 92, Cape Orlando Estates, Unit 1A, Orange County, Florida, being more particularly described as follows: commence at the east quarter corner of Section 11, Township 23 South, Range 32 East, Orange County, Florida, according to the plat of Rocket City, Unit 1A, as recorded in Plat Book Z, pages 71 through 73, of the public records of Orange County, Florida; thence run north 00° 20' 03" west, 16.69 feet; thence run north 89° 52' 12" west, 53 feet to the northeast corner of Tract C, Block 92, said Rocket City Unit 1A, said point also being on the west line of Bancroft Boulevard, said point also being the point of beginning; thence run south 00° 20' 03" east, along said west right-of-way line, a distance of 16.53 feet; thence run north 00° 24' 40" west along said west right-of-way line, a distance of 353.50 feet to the southeast corner of Lot 39, said Block 92; thence run south 89° 52' 12" west, 124 feet; thence run north 00° 24' 40" east, a distance of 353.89 feet; thence run north 00° 20' 03" west, 16.13 feet to the northeast corner of said Tract C;

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thence run north 89° 52' 12" east, along the north line of said Tract C, a distance of 125 feet to the point of beginning.

Lots 1 through 14, Block 93, Cape Orlando Estates, Unit 1A, Orange County, Florida, being more particularly described as follows: commence at the east quarter corner of Section 11, Township 23 South, Range 32 East, Orange County, Florida, according to the plat of Rocket City, Unit 1A, as recorded in Plat Book Z, pages 71 through 73, of the public records of Orange County, Florida; thence run south 00° 24' 40" west, along the east line of the southeast quarter of said Section 11, a distance of 413.33 feet; thence run south 89° 52' 12" west, 53 feet to the northeast corner of Lot 1, Block 93, said Rocket City, Unit 1A, said point also being on the west line of Bancroft Boulevard, said point also being the point of beginning; thence run south 00° 24' 40" west, along said west right-of-way line, a distance of 1210.01 feet to the southeast corner of Lot 14, said Block 93, said point also being on the platted north right-of-way of Nugent Street; thence north 89° 35' 20" west, 25.00 feet to the PC of a curve concave northeasterly and having a radius of 25 feet; thence run northeasterly along said curve through a central angle of 37° 03' 04", an ARC distance of 16.17 feet to the point of said curve; thence run north 52° 32' 16" west, 106.42 feet to a point on the west line of said Block 93; thence run north 00° 24' 40" east, 1145.66 feet to the northwest corner of said Block 93; thence run north 89° 52' 12" east, 125 feet to the point of beginning.

THE COMMONS

All that tract or parcel of land lying in a portion of the north half of Section 11, Township 23 South, Range 32 East, Orange County, Florida, and being more particularly described as follows: beginning at the intersection of the easterly right-of-way line of Dallas Boulevard, as shown on Cape/Orlando Estates Unit 12A, according to the plat thereof, as recorded in Plat Book 4, pages 66 through 70, of the public records of Orange County, Florida, and having a right-of-way width of 106 feet; and the southerly right-of-way line of Meredith Parkway, as shown on Cape/Orlando Estates, Unit 31A, according to the plat thereof, as recorded in Plat Book 3, pages 110 and 111, of the public records of Orange County, Florida, having a right-of-way width of 106 feet; thence south 89° 59' 38" east along said southerly right-of-way line, a distance of 5037.42 feet to the westerly line of Rocket City, Unit 1A, according to the plat thereof, as recorded in Plat Book Z, pages 71 through 73, of the public records of Orange County, Florida; thence south 00° 19' 51" east along said westerly line, a distance of

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1936.80 feet; thence south 89° 59' 18" west, a distance of 2218.74 feet; thence north 52° 32' 16" west, a distance of 521.34 feet; thence south 37° 28' 01" west, a distance of 373.47 feet to the northeasterly line of said Cape/Orlando Estates, Unit 12A, said northeasterly line being coincident with the southwesterly line of a 160 foot wide Florida Power and Light Company easement; thence north 52° 32' 15" west along said northeasterly line, a distance of 2756.82 feet to said easterly right-of-way line of Dallas Boulevard; thence north 00° 09' 08" west along said easterly right-of-way line, a distance of 240.27 feet to the point of beginning.

Containing 178.725 acres, more or less.

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ISSUE 6: Should Wedgefield Utilities, Inc. charge the customers in the additional territory the rates and charges approved by the Commission for Econ Utilities Corporation?

RECOMMENDATION: Yes. Wedgefield Utilities, Inc. should charge the customers in the additional territory the rates and charges in Econ Utilities Corporation's tariff. (WALKER)

STAFF ANALYSIS: Econ's presently approved rates and charges were effective January 13, 1995, pursuant to administrative order WS-94-0261. Staff has recommended in Issue 4 that Wedgefield charge Econ's existing rate and charges for the present service area. Staff also recommends that Wedgefield should be authorized to charge Econ's existing rates for customers in the additional territory.

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ISSUE 7: Should the Commission order Econ Utilities Corporation to show cause, in writing within twenty days, why it should not be fined for violation of Chapter 367.045, Florida Statutes?

RECOMMENDATION: No, show cause proceedings should not be initiated. (CROSBY)

STAFF ANALYSIS: As stated in the case background, Econ is in apparent violation of Section 367.045, Florida Statutes, which states, in part, that "[a] utility may not delete or extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission" Econ has been providing water and wastewater service to a shopping center and the Bancroft Boulevard area for approximately 15 years without approval of the Commission. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Econ's failure to obtain Commission approval prior to extending its service area appears to be due to an oversight. When the utility was first certificated, the description of the service area submitted with its application and approved by this Commission inadvertently omitted an area within which lines had been installed and service provided for some time. Staff notes that revenues from the area in question have been included in two subsequent rate cases. The area includes a shopping center and a strip of lots on the west side of Bancroft Boulevard. The omission was discovered during negotiations for the sale of the utility to Wedgefield.

Although Econ failed to obtain prior approval to serve the shopping center and the area along Bancroft Boulevard, staff does not believe that the violation of Section 367.045, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. The utility filed an

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application for an amendment of its service area immediately upon discovering the omission. Therefore, staff recommends that the Commission not order Econ to show cause for failing to obtain Commission approval prior to serving the area in question.

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ISSUE 8: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed if no timely protests are filed to the proposed agency action issues. (CROSBY)

STAFF ANALYSIS: If there are no timely protests to the proposed agency action issues (Issues Nos. 2 and 3), no further action will be required and the docket should be closed.