

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Transfer
of Certificate 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 Certificate Nos.)
404-W and 341-S in Orange County)
by Wedgefield Utilities, Inc.)

DOCKET NO. 960283-WS

Submitted for Filing:
August 1, 1997

VERIFIED PETITION AND
SUGGESTION OF DISQUALIFICATION

COMES NOW Utilities, Inc. and its wholly owned subsidiary,
Wedgefield Utilities, Inc., (hereinafter collectively referred to
as "Wedgefield") and, pursuant to Section 120.665, Florida
Statutes, and Rule 25-21.004, F.A.C., file this verified Petition
and Suggestion of Disqualification and state:

1. In his dissent in Order No. PSC-96-1241-FOF-WS in this
Docket, Commissioner Deason acknowledged the existence of the
current Commission policy on acquisition adjustments, including
negative acquisition adjustments. Also in his dissent,
Commissioner Deason took a position on burden of proof which is
contrary to the existing Commission policy, and urged that it be
changed in this case, on a case-by-case basis. Such a departure
from the requirements of current Commission policy and the
requirements of the Administrative Procedure Act (APA), Chapter
120, Florida States, shows that the Commissioner has demonstrated
bias and prejudice in this matter and is disqualified from sitting
on the panel deciding this case.

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2. If a Commissioner has already taken a position in a pending case (as was done in the dissent in this case) before any evidence was heard, then that Commissioner's consideration of the evidence and oral argument adduced at hearing cannot be impartial. Taking such a position before the evidence or legal argument is heard shows that the Commissioner has demonstrated bias and prejudice in this matter and is disqualified from sitting on the panel deciding this case.

3. Commissioner Deason was one of the chief proponents of the position now taken by the Office of Public Counsel (OPC) in this case. On July 31, 1990, seven years ago, in Docket No. 891309-WS, the then-current Commissioners met in Agenda Conference to consider and decide whether to issue a proposed agency action (PAA) order on the Investigation of Acquisition Adjustment Policy. The Office of Public Counsel was represented by Mr. Rick Mann, who introduced one of the OPC employees to speak against the PSC policy on acquisition adjustments, which PSC Staff was recommending remain the same. That employee was introduced by Mr. Mann in the following words:

We did not come over here today to re-argue our entire position. We do feel compelled, however, to make some brief comments on the recommendation of staff and also to answer any questions that the Commission may have about our position.

To this end I brought with me today Mr. Terry Deason, chief analyst on our staff and our expert on acquisition adjustments.

Mr. Deason's position was not accepted by the Commission, which reaffirmed its previously existing policy on acquisition

adjustments which has been in effect since at least 1983. That policy is, and has been, that "Absent extraordinary circumstances, no acquisition adjustment, either positive or negative, is authorized". The burden of proof rests on the proponent of the acquisition adjustment, whether positive or negative.

A PAA order was issued, OPC protested the PAA, and the matter was set for hearing.

Mr. Deason subsequently was appointed to membership on the Public Service Commission in February, 1991, prior to the Commission's final deliberation in that docket in February, 1992. Mr. Deason properly recused himself from taking part in that deliberation. The Commission at that time reaffirmed its prior policy on acquisition adjustments, which was contrary to the position then and now advocated by Commissioner Deason.

Although a Commissioner is free to advocate any position, even though different from existing policy of the Commission, all Commissioners are bound to follow the proper law and procedures to change that policy. Pursuant to the requirements of the APA, that change can now be implemented only in the context of a generic proceeding and not a case-by-case basis.

Acknowledging, as the Commissioner stated quite strongly in his dissent, that his position is different than the current policy of the Commission on negative acquisition adjustments, and then attempting to change the policy contrary to the procedures required by law, shows that the Commissioner has demonstrated bias and prejudice in this matter and is disqualified from sitting on the

panel deciding this case.

4. Commissioner Deason, merely by his position as a Commissioner and as an outspoken proponent of a change in the Commission policy, (even though it has been in effect since at least 1983), places the Commission Staff in a difficult situation in the conduct of their responsibilities in this case, in regard to taking positions contrary to prior Commission orders and policy of the Commission. Such influence on Staff, whether intentional or unintentional, shows that the Commissioner has demonstrated bias and prejudice in this matter and is disqualified from sitting on the panel deciding this case.

5. The Office of Public Counsel (OPC), which was Commissioner Deason's former employer, is the protestant in this case. OPC did not prevail in its prior challenges to the Commission policy on acquisition adjustments, as shown in the prior generic cases resulting in Commission Order No. 23376 issued 8/21/1990 and Order No. 25729 issued 2/17/1992. Those generic proceedings upheld the requirement that the proponent of an acquisition adjustment, either negative or positive, bears the burden of proof.

OPC now seeks to repeat their positions which were argued aggressively and supported by Mr. Deason as an employee of OPC seven years ago. If Commissioner Deason were an attorney, he would be barred from participating in this proceeding because of a conflict of interest, and by being willing to ignore the separation of one employment position and a subsequent employment position,

the Commissioner has demonstrated bias and prejudice in this matter and is disqualified from sitting on the panel deciding this case.

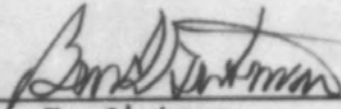
6. To assure confidence in the impartiality of the decisions of government, public officials must not only be fair, impartial, unbiased and not prejudiced for against any entity regulated by that government official, but they must also give the strictest attention to their appearance of impartiality. The fact that a former employee of the protestant in this proceeding, who has actively and aggressively participated in prior proceedings on the side of the opponent of the Petitioner in the current proceeding and in favor of the side of the other participant in the proceeding (as an employee, no less), demonstrates that the blatant appearance of bias and prejudice is present. Therefore, the Commissioner is disqualified from sitting on the panel deciding this case.

7. The assertions set forth in each numbered section above are sufficient by themselves for disqualification of a Commissioner for continuing to participate in the proceeding. Furthermore, all the facts set forth above, when taken as a whole, demonstrate that the Commissioner had demonstrated not only an appearance of bias and prejudice against the Petitioner in this case, but has demonstrated bias and prejudice in fact, the Commissioner is disqualified from sitting on the panel deciding this case.

WHEREFORE, due to the bias and prejudice of the Commissioner assigned to this proceeding, against Petitioner, the regulated utility states that the Commissioner is disqualified from sitting on the panel deciding this case and should not participate in any

manner in the current docket.

Respectfully submitted this 1st day of August, 1997



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Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of the foregoing has been filed with the Clerk, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 by hand delivery and that a true and correct copy has been sent to Charles Beck, Esq., Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; to Mr. John Forrer, Econ Utilities, Inc., 1714 Hoban Rd. NW, Washington, D.C. 20007; and to Jennifer Brubaker, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by U.S. Mail this 1st day of August, 1997.

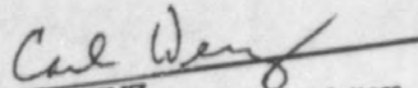


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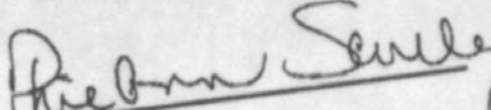
STATE OF ILLINOIS
COUNTY OF COOK

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Petition and Suggestion for Disqualification and the statements therein are true to the best of my knowledge and belief.


CARL WENZ
Vice President, Regulatory Matters

SWORN TO AND SUBSCRIBED before me by Carl Wenz, who is Vice President, Regulatory Matters, of Utilities, Inc., and who is personally known to me, this 1st day of August, 1997.


Notary Public

