

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 12, 1997

AFFIDAVIT

STATE OF ILLINOIS

COUNTY OF COOK

Comes now Affiant, Carl Wenz, and states that:

1. Affiant is Vice President, Regulatory Matters, for Utilities Inc., of which Wedgefield Utilities, Inc. is a wholly owned subsidiary. They have filed a petition for transfer of Econ Utilities to Wedgefield Utilities, Inc. in the above styled docket. In the capacity of Vice President, Affiant has caused to be filed a Verified Petition and Suggestion of Disqualification on August 1,

1997.

2. On June 16, 1997, the first preliminary prehearing conference was held in this case. At that preliminary prehearing, Petitioner first became aware that the Office of Public Counsel (OPC) probably would be challenging the existence of the current policy of the Public Service Commission (PSC or the Commission) on acquisition adjustments, This was also the first time that OPC

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alluded to their position in this case as being driven by Commissioner Deason's dissent in Order PSC-96-1241-FOF-WS, the Proposed Agency Action (PAA) order in this case. Also at this first preliminary prehearing, it was learned that Commission Staff was considering a position on burden of proof which was contrary to existing Commission policy on burden of proof, that is, that the burden of proof resides with the proponent of the acquisition adjustment which, in this case, is OPC.

3. In pleadings previously filed in this docket, Petitioner had attempted to clarify OPC's protest and request for hearing, to determine whether OPC intended to follow the current Commission policy on acquisition adjustments and seek to show "extraordinary circumstances" which would warrant a negative acquisition adjustment, or whether OPC was seeking to challenge the existing policy. The Commission ruled against all of Petitioner's pleadings, thus leading Petitioner to believe that the current policy of negative acquisition adjustments, including burden of proof, would be followed. Petitioner also had sought to have the case heard by the full 5-member Commission because it appeared that OPC might try to have the Commission policy changed. Petitioner's objections to the lack of generic proceeding and its request for a hearing by the full Commission were rejected. This affirmed Petitioners' belief that the current policy regarding acquisition adjustments and burden of proof would be followed.

4. As part of the research and preparation for this case, on June 26, 1997, Petitioner attempted to have docket files at the

Commission reviewed for Docket No. 891309-WS, resulting from the OPC's Petition to Initiate Rulemaking and Initiate Investigation, filed by OPC in 1989. The Commission had rejected the OPC's proposed rule, but initiated a generic docket and investigation on acquisition adjustments. We sought to locate the rule language which the OPC had proposed in its request for rulemaking. The Commission Order Nos. 22361, 23376 and 25729 issued in Docket No. 891309-WS alluded to that language, but the Orders were not specific.

5. Subsequently, as a result of the search for records on Docket 891309-WS, the PSC Bureau of Records reported that they did not have the files in that docket; nor did the State Archives have them and they apparently were lost. However, the Bureau did have a document list from that docket. It was from a reading of that document list that we first became aware that Commissioner Deason participated in Docket 891309-WS as an OPC employee. (Document No. 01577-91, 2/18/91, Memo from Commissioner Deason recusing himself from participating in the docket because of involvement while employed at OPC.) We did not know the extent of Mr. Deason's involvement at that time. The Bureau of Records inquired if there were any specific documents that they could look for, and we identified several documents from the documents list, including Document No. 01577-91, 2/18/91, the Memo from Commissioner Deason recusing himself.

6. On or about July 9, 1997, the Bureau of Records reported that they could not find any of the specific documents requested

from Docket No. 891309-WS.

7. Further effort was made to locate copies of the records. Counsel for a participant in Docket No. 891309-WS was located, and after review of their file lists, they believed they had some documents from that case in storage.

8. On or about July 11, 1997, we researched those files in storage. The file was not complete, but we did find a copy of the OPC petition (11/17/89), the OPC statement of issues and positions (3/14/90), and the transcript of the 7/31/90 PSC Agenda Conference at which the PAA in Docket No. 891309-WS was considered. Shortly thereafter, copies of those documents were made and distributed to company officials for their consideration. Upon reviewing the documents, it became clear that the position which OPC is taking in the instant transfer proceeding is essentially the same as was litigated in the prior Commission investigation, and that Mr. Deason, then an OPC employee, had spoken in support of OPC's position as the OPC's "expert on acquisition adjustment policy." This was also the first time we were aware that Mr. Deason was the author of the OPC position to shift the burden of proof away from the proponent of a negative acquisition adjustment to the utility. That position is also repeated in Commissioner Deason's dissent in the PAA order on the transfer in this case.

9. PSC Staff requested a second preliminary prehearing conference on the transfer from Econ to Wedgefield. It was held on July 21, 1997. It was at this second preliminary prehearing conference that OPC confirmed that its position would be that the

Commission's acquisition adjustment policy, consistent since 1983 (and confirmed in Order Nos. 23376 and 25729 after a full, generic proceeding), did not apply to this case. It was also not until this second preliminary prehearing that Petitioner learned that the PSC Staff had made the firm decision to take a position on burden of proof that would change prior policy of the Commission that the proponent of a negative acquisition adjustment bore the burden of proof. Furthermore, OPC again alluded to the fact that their position was driven by Mr. Deason's dissent in this case in Order No. PSC-96-1241-FOF-WS in which he acknowledged but complained about the existing Commission policy requiring the proponent of the acquisition adjustment to bear the burden of proof.

10. We still have not been able to locate a copy of Document No. 01577-91, 2/18/91, Memo from Commissioner Deason recusing himself from participating in the docket because of involvement while employed at OPC. However, it is evident that, in this case, a Commissioner is being placed in a position of ruling on his own argument made on behalf of a party while employed by that party, in a case before the same agency where the prior generic proceeding considered and rejected that argument. This is particularly problematical when the Commissioner would be deciding the case as a member of a 3-member panel of the full 5-member commission.

11. Seeking the disqualification of a Public Service Commissioner, or any other public official, for bias or prejudice, is not a matter to be taken lightly. It requires careful consideration of the relevant facts, which takes some time.

Petitioner believes that it has acted with all reasonable timeliness in filing the Verified Petition and Suggestion of Disqualification on August 1. After carefully researching and analyzing the matters involved, and after giving due and careful consideration to the matter, it was decided on the morning of August 1, 1997, that the Verified Petition and Suggestion of Disqualification should be filed.

FURTHER AFFIANT sayeth not.

Carl J. Wenz

Carl J. Wenz  
Vice President, Regulatory Matters  
Utilities, Inc.  
Wedgfield Utilities, Inc.

SWORN TO AND SUBSCRIBED before me by Carl J. Wenz, who is Vice President,  
Regulatory Matters of Utilities, Inc., and who is personally known to me, this 12th day of  
August, 1997.

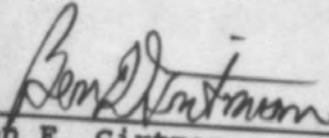


Joyce Ann Twarog

Notary Public

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to Charles Beck#, Esq., Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; 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 (or by hand delivery \* or facsimile #) this 12th day of August, 1997.



Ben E. Girtman  
FL BAR NO. 186039  
1020 E. Lafayette St.  
Suite 207  
Tallahassee, FL 32301

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



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF HEARING

TO

WEDGEFIELD UTILITIES, INC.  
ECON UTILITIES CORPORATION  
OFFICE OF PUBLIC COUNSEL

AND

ALL OTHER INTERESTED PERSONS

RE: DOCKET NO. 960235-WS

APPLICATION FOR TRANSFER OF CERTIFICATES NOS. 404-W AND 341-S IN ORANGE  
COUNTY BY WEDGEFIELD UTILITIES, INC.

AND

DOCKET NO. 960283-WS

APPLICATION FOR AMENDMENT OF CERTIFICATES NOS. 404-W AND 341-S IN  
ORANGE COUNTY BY WEDGEFIELD UTILITIES, INC.

ISSUED: JULY 30, 1997

NOTICE IS HEREBY GIVEN that a hearing will be held before the Florida Public Service Commission regarding the application of Wedgefield Utilities, Inc. for transfer of Certificates Nos. 404-W and 341-S in Orange County from Econ Utilities Corporation to Wedgefield Utilities, Inc., and the application of Wedgefield Utilities, Inc. for the amendment of Certificates Nos. 404-W and 341-S in Orange County, at the following time and place:

10:00 a.m., Tuesday, August 19, 1997  
Wedgefield Drainage Station  
19950 Nugent Street  
Orlando, FL 32833

Customers will be given the opportunity to present testimony at the beginning of the morning session on Tuesday, August 19, 1997. All customers wishing to testify are urged to be present at the beginning of the session, since the session may be adjourned early if no customers are present. By providing customer testimony, a person does not become a party to the proceeding. To become an official party of record, you must file a Petition for Intervention at least five days before the final hearing, pursuant to the requirements contained in Rule 25-22.039, Florida Administrative Code.

### PURPOSE AND PROCEDURE

The purpose of this hearing is to consider the appropriateness of inclusion of a negative acquisition adjustment in the establishment of rate base for the purpose of the transfer of facilities from Econ Utilities Corporation to Wedgefield Utilities, Inc., and any motions or other matters that may be pending at the time of the hearing. The Commission may rule on any such motions from the bench or may take the matters under advisement.

At the hearing, all parties shall be given the opportunity to present testimony and other evidence on the issues identified by the parties at the prehearing conference held on August 4, 1997. All witnesses shall be subject to cross-examination at the conclusion of their testimony.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770 at least five calendar days prior to the hearing. Any person who is hearing or speech impaired, please contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at (800) 955-8771 (TDD).

### JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes. This hearing will be governed by said Chapter as well as Chapter 120, Florida Statutes and Chapters 25-9, 25-22 and 25-30, Florida Administrative Code.

### APPLICABLE STATUTES AND RULES

Sections 367.045 and 367.071, Florida Statutes, and any other relevant sections of Chapter 367, Florida Statutes, are applicable to this proceeding, as well as Chapter 120, Florida Statutes, and Rules 25-9, 25-22 and 25-30, Florida Administrative Code.

By DIRECTION of the Florida Public Service Commission, this 30th day of July, 1997.