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August 20, 1997

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket Nos. 960235-WS & 960283-WS

Dear Ms. Bayo:

Enclosed for filing in the above-references docket are the original and 15 copies of Citizens' Motion for Reconsideration.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

- ACK
- AFA 1
- APP _____
- CAF _____
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CAPITOL BOND

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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.)
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Docket No. 960235-WS
Filed: August 20, 1997

In Re: Application for
Amendment of Certificates Nos.
404-W and 341-S in Orange County
by Wedgefield Utilities, Inc.)
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Docket No. 960283-WS
Filed: August 20, 1997

CITIZENS' MOTION FOR RECONSIDERATION

Pursuant to rule 25-22.0376, Florida Administrative Code, the citizens of Florida ("citizens"), by and through Jack Shreve, Public Counsel, move the commission panel assigned to this case to reconsider order no. PSC-97-0952-PHO-WS issued August 11, 1997.

Background

1. The central issue in this case is whether the commission will recognize the negative acquisition adjustment associated with the purchase of the assets of Econ Utilities Corporation by Wedgefield Utilities, Inc. In order to make that determination, the PSC must first decide the extent to which it is bound by previous commission orders concerning negative acquisition adjustments.

2. On November 17, 1989, the citizens filed a petition to initiate rulemaking on

acquisition adjustments or, in the alternative, to initiate an investigation. By order no 22361 issued January 2, 1990, the commission denied the citizens' petition for rulemaking, but instead granted the request to open an investigation. That investigation resulted in a PAA order by all five commissioners (order 23376 issued August 21, 1990) and a final order by a panel of two commissioners (order 25729 issued February 17, 1992). The final order concluded the investigation and confirmed the commission's acquisition adjustment policy. However, the Commission never adopted a rule on acquisition adjustments, despite indications contained in order 25729 that the commission intended to do so.

3. Section 120.54(1), Florida Statutes (1996 Supp.), states that rulemaking is *not* a matter of agency discretion. The dichotomy between having no rule on acquisition adjustments, on the one hand, but having an order dealing with acquisition adjustments, on the other hand, leads to a legal issue concerning the effect of the earlier orders in this case. In meetings with the parties (including staff) prior to the prehearing conference, the citizens raised an issue about the effect of the earlier orders. The issue, as well as the positions of the citizens and Wedgefield Utilities, follow:

Issue: Is the Commission's current acquisition adjustment policy, as set forth in order nos. 23376 and 25729, binding in this case?

Citizens' position: No, the matters set forth in orders no. 23376 and 25729 are not binding in this case. The Commission has no rule on acquisition adjustments, even though rulemaking is not a matter of agency discretion. The Commission is therefore still in the incipient stage of its policy

development in this area. Any tests or criteria set forth in orders of non-rule dockets do not bind this case. For example, "extraordinary circumstances" need not be shown, even though the Citizens have shown that such circumstances exist in this case, because there is no rule requiring a showing of "extraordinary circumstances." The Commission's decision must be made based on the particular facts and circumstances of this case.

Wedgefield's position: Yes. The policy set out in Order Nos. 23376 and 25729 confirms policy developed on a case-by-case basis and previously in effect since at least 1983. The policy set out in those orders meets the definition of a rule in Section 120.52(15), Florida Statutes. The procedure followed by the Commission in adopting this policy conforms to the procedure required in Section 120.54, Florida Statutes, for adopting a rule. Even though the Commission has not assigned a rule number to the policy, it is, under Chapter 120, Florida Statutes, a rule, and is binding in this case. The utility in this case has rightfully relied on that policy in entering into a contract to purchase another utility, also regulated by this Commission. Just because the Commission has failed in its obligation to formally assign a rule number, does not mean it can now act as if the policy does not exist and as if Chapter 120, Florida Statutes, does not exist, and reconsider the policy on a case-by-case basis. Such an action would violate the utility's right to due process. The policy set forth in Order Nos. 23376 and 25729 is binding on this case and all cases until such time as it may be changed in accordance with the generic rulemaking procedures set forth in Chapter 120, Florida Statutes.

The issue is an important one because it deals with the threshold tests (or absence of such tests) that must be met in order to recognize the negative acquisition adjustment in this case.

4. At the prehearing conference, staff orally moved to strike this issue. No prior notice was given to the parties about staff's motion. Over the objection of the citizens, the

prehearing officer granted the motion. The prehearing order issued subsequent to the prehearing conference does not mention the staff's oral motion or the prehearing officer's ruling on the motion. Instead, the prehearing order simply deleted the issue as if it never existed. The citizens seek reconsideration of the prehearing officer's decision to strike this issue.

Argument

5. Striking the issue violates section 120.57(1)(b), Florida Statutes (1996 Supp.), which states that "All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, ..." The effect of the Commission's prior orders on this case is necessarily an issue because the commission must decide whether its non-rule policy binds the parties in this case. This decision affects the very tests that must be met for recognition of the negative acquisition adjustment. Moreover, the fact that it is an issue can be seen by the opposing positions of the citizens and Wedgefield Utilities on the issue. The commission can not avoid this legal issue simply by striking the issue and refusing to rule on it.

6. Second, striking the issue violates section 350.0611(1), Florida Statutes (1995), which states that the Public Counsel has the power "To recommend to the commission, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission and urge therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission,..." By

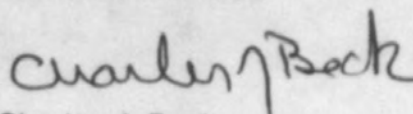
striking the issue, the prehearing officer denied the Public Counsel his statutory right to present argument on the merits of this position and to urge a position which he deems to be in the public interest.

Conclusion

For the reasons stated, the commission panel should reconsider the prehearing officer's decision to strike this issue. The issue should be reinstated.

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL



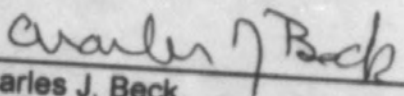
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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NOS. 960235-WS and 960283-WS

I HEREBY CERTIFY that a copy of the foregoing has been furnished by
U.S. Mail or hand-delivery to the following parties on this 20th day of August, 1997.



Charles J. Beck

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