

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase
in water rates in Orange County
by Wedgefield Utilities, Inc.

DOCKET NO. 991437-WU
ORDER NO. PSC-01-0804-PCO-WU
ISSUED: March 26, 2001

ORDER GRANTING FIRST MOTION TO COMPEL AND REQUEST FOR RULING ON
FIRST MOTION TO COMPEL AND DENYING REQUEST FOR ORAL ARGUMENT

Background

On October 12, 2000, the Office of Public Counsel (OPC) filed its First Set of Interrogatories and First Request for Production of Documents to Wedgefield (First Set of Discovery) which included Interrogatories Nos. 1 through 10 and Document Requests Nos. 1 through 11. On October 20, 2000, Wedgefield Utilities, Inc. (Wedgefield or utility) timely filed a Response and Objections to OPC's First Set of Interrogatories and First Request for Production of Documents to Wedgefield (First Response and Objections). On October 23, 2000, OPC filed its First Motion to Compel, Emergency Request for Hearing, and Request for Other Relief (First Motion to Compel). On October 26, 2000, OPC timely filed a Motion to Reconsider Order Establishing Procedure (Motion to Reconsider).

On October 31, 2000, OPC filed its Second Set of Interrogatories and Second Set of Requests for Production of Documents to Wedgefield (Second Set of Discovery) which included a second Interrogatory No. 11 and a Document Request No. 12. Wedgefield provided responses to OPC's Second Set of Discovery. On November 22, 2000, OPC filed a third set of interrogatories which it mistakenly entitled its Second Set of Interrogatories to Wedgefield (Third Set of Discovery). The Third Set of Discovery included a second Interrogatory No. 11 through Interrogatory No. 26.

On November 3, 2000, Wedgefield filed a Motion for Summary Final Order. Pursuant to Order No. PSC-00-2182-PCO-WS, issued November 15, 2000 (Order Modifying Order Establishing Procedure), rulings on OPC's First Motion to Compel and on its Motion to Reconsider Order Establishing Procedure were deferred until after this Commission's decision on Wedgefield's Motion for Summary Final Order. By Order No. PSC-00-2388-AS-WU, issued December 13, 2000,

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FPSC-REGULATORY REPORTING

the Commission denied Wedgefield's Motion for Summary Final Order without prejudice.

On January 12, 2001, Wedgefield filed a Request for Oral Argument and a Petition for Writ of Certiorari (Petition) with the First District Court of Appeal (First DCA) to reverse Order No. PSC-00-2388-AS-WU. By Order No. PSC-00-2365-PCO-WU, issued December 8, 2000, all discovery efforts and controlling dates were held in abeyance pending completion of the appellate proceedings. On February 13, 2001, the First DCA treated Wedgefield's Petition as a Petition for Review of Non-Final Agency Action and denied the Petition. On March 1, 2001, the First DCA's denial of Wedgefield's Petition for Review of Non-Final Agency Action became final.

On March 8, 2001, Wedgefield filed its Response and Objections Addressing the Office of Public Counsel's First Set of Discovery, Second Set of Discovery, and Third Set of Discovery (Second Response and Objections) and a Request for Oral Argument on Its Responses and Objections to Discovery by the Office of Public Counsel (Request for Oral Argument). On March 15, 2001, OPC filed a Request for Ruling on First Motion to Compel, Response to Wedgefield's New Objections, and Withdrawal of Interrogatories Nos. 11 through 26.

Pending Discovery Disputes

Prior to Order No. PSC-00-2365-PCO-WS, (Order on Abatement), no rulings had been made on OPC's First Motion to Compel and on its Motion to Reconsider Order Establishing Procedure. Since the First DCA's decision has become final, these pleadings shall be addressed in this Order. In addition, Wedgefield's Second Response and Objections and Request for Oral Argument and OPC's Request for Ruling on First Motion to Compel will be addressed.

In its Emergency Request for Hearing and Request for Other Relief, OPC argued that it could not meet the schedule for prefiling its testimony on November 17, 2000, if Wedgefield delayed its responses to the discovery requests. Therefore, OPC requested an emergency hearing on Wedgefield's objections or, in the alternative, that its testimony due date be extended by one day for every day after November 1, 2000, that production of the discovery is delayed. That request was reiterated in OPC's Motion to

Reconsider Order Establishing Procedure. No action is necessary on OPC's Emergency Request for Hearing and Request for Other Relief and Motion to Reconsider Order Establishing Procedure because they are moot. The controlling dates for this case, including the hearing date, have subsequently been modified as set forth in Order No. PSC-01-0544-PCO-WU.

In its First Response and Objections, Wedgefield objects to Interrogatories Nos. 1 through 10 and Document Requests Nos. 1 through 8 and 11 from OPC's First Set of Discovery on the grounds that they are premature. These discovery requests pertain to the issue of acquisition adjustment, which issue was raised in OPC's protest. Wedgefield argues that OPC has previously raised and fully litigated the same acquisition adjustment issue for this same utility in Docket No. 971220-WS. Moreover, Wedgefield argues that the discovery requests seek information which is either not otherwise relevant to the issues of the action or not reasonably calculated to lead to the discovery of admissible evidence. Wedgefield further argues, *inter alia*, that the discovery requests are overly broad, unduly burdensome, oppressive, time-consuming, harassing, vague and ambiguous, and that, to some extent, they seek privileged information.

In its First Motion to Compel, OPC points out that in its Response to Wedgefield's Motion to Strike and Dismiss, it shows that the issue of acquisition adjustment is a permissible issue for this proceeding. With respect to Wedgefield's remaining objections, OPC cites to Kyker v. Lopez, 718 So. 2d 957 (Fla. 5th DCA 1998), and Rule 1.280(c), Florida Rules of Civil Procedure, for the proposition that Wedgefield has the burden of proving the validity of its objections. OPC argues that the utility provides no explanation as to how such objections apply to any of the discovery requests at issue.

In its Request for Ruling on First Motion to Compel, OPC argues that Wedgefield's objections filed March 8, 2001, attempt to raise new objections to OPC's First Set of Discovery. The utility claims to have reserved a right to continue filing new objections to discovery. The Order Establishing Procedure issued October 16, 2000, requires objections to discovery to be made within ten days of the discovery request. Therefore, no such right to continue filing new objections to discovery exists. OPC therefore requests

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that the late-filed objections be stricken as untimely. OPC further requests a ruling on its First Motion to Compel.

By Order No. PSC-00-2388-AS-WU, which denied Wedgefield's Motion for Summary Final Order, this Commission found that

Section 120.57(1), Florida Statutes, contemplates that responses to discovery be considered in ruling on a motion for summary final order. In this case, OPC has pending discovery on the issue of negative acquisition adjustment. OPC asserts that it intends to establish through its discovery a change in circumstances sufficient to overcome our previous decision in acquisition adjustment. Therefore, we find that it is premature to decide whether a genuine issue of material fact exists when OPC has not had the opportunity to complete discovery and file testimony. See Brandauer v. Publix Super Markets, Inc., 657 So. 2d 932, 933 (Fla. 2d DCA 1995).

In light of this Commission's decision to deny Wedgefield's Motion for Summary Final Order and the First DCA's denial of Wedgefield's Petition for Review of Non-Final Agency Action, OPC must be given the opportunity to complete discovery on the issue of negative acquisition adjustment.

Moreover, Rule 1.280 (b) (1), Rules of Civil Procedure, states that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." OPC's discovery requests appear to be reasonably calculated to lead to the discovery of admissible evidence. Therefore, OPC's First Motion to Compel and Request for Ruling on First Motion to Compel shall be granted. Wedgefield is hereby compelled to provide responses to OPC's Interrogatories Nos. 1 through 10 and Document Requests Nos. 1 through 8 and 11 from the First Set of Discovery within fourteen days of the issuance date of this Order. Wedgefield's Request for Oral Argument on its Response and Objections to OPC's First Set of Discovery is denied.

In its Motion to Abate and Stay Proceedings Pending Appellate Review (Motion to Abate), Wedgefield requested permission to file

its objections and responses to OPC's Third Set of Discovery within ten days after the decision on appeal became final. By Order No. PSC-00-2365-PCO-WU, issued December 8, 2000, Wedgefield's Motion to Abate was granted. However, Wedgefield's Second Response and Objections not only contained objections to OPC's Third Set of Discovery, but also OPC's First Set of Discovery. These second objections to OPC's First Set of Discovery were not timely filed. As stated earlier, the Order on Procedure, Order No. PSC-00-1895-PCO-WU, issued October 16, 2000, requires that objections to discovery be made within ten days of service. In this instance, Wedgefield did not file these second objections to OPC's First Set of Discovery until March 8, 2001, which is well beyond the deadline of ten days from the discovery request. Therefore, Wedgefield's second set of objections to OPC's First Set of Discovery contained in its Second Response and Objections shall not be considered. Wedgefield has responded to OPC's Second Set of Discovery. OPC's Third Set of Discovery was withdrawn. As such, no ruling is necessary on Wedgefield's Request for Oral Argument on its Response and Objections to OPC's Second and Third Sets of Discovery.

Based on the foregoing, it is

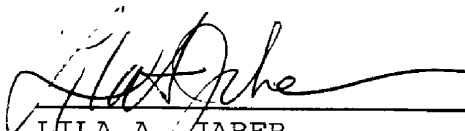
ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that the Citizen's First Motion to Compel is granted as set forth in the body of this Order. Wedgefield Utilities, Inc., shall provide responses to the Office of Public Counsel's First Set of Interrogatories and Requests for Production of Documents within fourteen days of the issuance date of this Order. It is further

ORDERED that the Citizen's Request for Ruling on First Motion to Compel is granted. It is further

ORDERED that Wedgefield Utilities, Inc.'s Request for Oral Argument on its Responses and Objections to the Office of Public Counsel's First Set of Discovery is denied.

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By ORDER of Commissioner Lila A. Jaber as Prehearing Officer,
this 26th day of March, 2001.



LILA A. JABER

Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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

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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.