

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: June 15, 2001
TO: Orlando District Office (Charleston Winston)
FROM: Denise N. Vandiver; Division of Regulatory Oversight *DN*
RE: Docket No. 991437-WU; Wedgefield Utilities, Inc.; Audit Request: audit the utility's compliance with the NARUC USOA; Audit Control No. 01-166-3-2

Attached is a new audit service request. The analyst's requested due date is September 30, 2001 . In order to meet the due date, the audit work papers should be delivered to my office two days before the stated due date.

I also request that Charleston Winston be added to the CASR distribution list.

Attachments

cc: Public Counsel
Division of Regulatory Oversight (Halbert, File Folder)
Division of Records and Reporting (Moses)

APP _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
LEG _____
OPC _____
PAI _____
RGO _____
SEC I _____
SER _____
OTH _____

DOCUMENT NUMBER-DATE

07596 JUN 19 2001

FPSC RECORDS/REPORTING

STATE OF FLORIDA

Commissioners:
E. LEON JACOBS, JR., CHAIRMAN
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI



DIVISION OF REGULATORY OVERSIGHT
DANIEL M. HOPPE, DIRECTOR
(850) 413-6480

Public Service Commission

June 15, 2001

Mr. Donald Rasmussen
Wedgefield Utilities, Inc.
200 Weathersfield Avenue
Altamonte Springs, Florida 32714-4099

Re: Docket No. 991437-WU; Wedgefield Utilities, Inc.;
Audit Request: audit the utility's compliance with the NARUC USOA; Audit
Control No. 01-166-3-2

Dear Mr. Rasmussen:

The Florida Public Service Commission will audit the utility's compliance with the NARUC USOA, in accordance with Commission audit procedures. Access will be requested to documents and records of the utility and, if necessary, supporting records for affiliate company transactions that affect regulated operations. Staff auditors may also request to review the utility's external audit working papers for the most recent independent audit. Charleston Winston, (407) 245-0846, the district office supervisor, will coordinate this audit. Questions regarding the audit or audit staff should be directed to the district supervisor or myself. My phone number is (850) 413-6487.

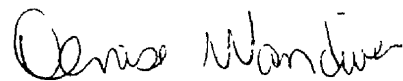
The Audit Access to Records rule for each industry states:

In those instances where the utility disagrees with the auditor's assessment of a reasonable response time to the audit request, the utility shall first attempt to discuss the disagreement with the auditor and reach an acceptable revised date. If agreement cannot be reached, the utility shall discuss the issue with successive levels of supervisors at the Commission until an agreement is reached.

Mr. Donald Rasmussen
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June 15, 2001

A formal report is expected to be issued for internal Commission use on September 30, 2001 . A copy of the final report will be mailed to the company liaison listed in the Commission Mailing Directory.

Sincerely,



Denise N. Vandiver
Bureau Chief of Auditing Services

cc: Division of Regulatory Oversight (Orlando District Office Supervisor, File Folder)
Division of Records and Reporting
Division of Legal Services
Office of the Public Counsel

COMPANY IDENTIFICATION

Printed on 06/15/2001 at 10:31:51 by WFH

Complete Name: Wedgefield Utilities, Inc.

Mailing Name: Wedgefield Utilities, Inc.

Company Code: WS759 FEID Number: 36-4071705

MAILING INFORMATION

Attention:

Address Line 1: 200 Weathersfield Avenue

Address Line 2:

City: Altamonte Springs State: FL Zip Code: 32714-4099

E-mail Address: d.w.rasmussen@utilitiesinc-usa.com

Web Address: <http://www.utilitiesinc-usa.com>

Liaison 1: Donald Rasmussen

Liaison 2: Carl J. Wenz

Title: Vice President

Title: Vice President

Phone: (407) 869-1919

Phone: (847) 498-6440

E-mail: d.w.rasmussen@utilitiesinc-usa.c E-mail:

Fax 1: (407) 869-6961

Fax 2:

County: 48 - Orange

COMPANY IDENTIFICATION

Printed on 06/15/2001 at 10:31:56 by WFH

Complete Name: Wedgefield Utilities, Inc.

Mailing Name: Wedgefield Utilities, Inc.

Company Code: WS759 FEID Number: 36-4071705

COMPANY INFORMATION

Address Line 1: 3100 Bancroft Blvd.

Address Line 2:

City: Orlando State: FL Zip Code: 32833-4011

Reg. Date: 10/07/1996 Inactive Date:

Transferred To:

Trans. From: WS062 Econ Utilities Corporation

Certificate 1: 341S Certificate 2: 404W

Corporate Type:

Service 1: WAS - Wastewater

Service 2: WAT - Water

Service 3:

Service 4:

Class (WAW): C

Phone Count:

County 1: 48 - Orange

County 2:

County 3:

County 4:

Bankruptcy: No

COMPANY IDENTIFICATION

Printed on 06/15/2001 at 10:31:59 by WFH

Complete Name: Wedgefield Utilities, Inc.

Mailing Name: Wedgefield Utilities, Inc.

Company Code: WS759 FEID Number: 36-4071705

CONSUMER LIAISON INFORMATION

Address Line 1: 200 Weathersfield Avenue

Address Line 2:

City: Altamonte Springs State: FL Zip Code: 32714-4099

E-mail Address:

Web Address:

Consumer Liaison: Jacquelyn Rasmussen

Title: Regional Office Manager

Phone: (407) 869-1919

Fax: (407) 869-6961

Warm Transfer:

minimum level. As such, the average costs per ERC will result in reasonable CIAC charges. Further, we find that a combined service availability charge of \$1,320 for water is fair, just, and reasonable.

Based on our analysis, we approve a plant capacity charge of \$490 and main extension fee of \$830 for the utility's water service areas. The utility shall file revised tariff sheets within thirty days of the issuance date of the Consummating Order which are consistent with our decision. Our staff shall be given administrative authority to approve the revised tariff sheets upon our staff's verification that the tariffs are consistent with our decision. If the revised tariff sheets are filed and approved, the plant capacity charge and main extension fee shall become effective for connections made on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(2), Florida Administrative Code.

SHOW CAUSE

Audit Exception No. 1 states that the utility did not maintain its accounts and records in conformance with the NARUC USOA. In its response to the audit report, dated June 12, 2000, Wedgefield did not object to this exception.

Rule 25-30.115, Florida Administrative Code, requires all water and wastewater utilities to maintain their accounts and records in conformance with the 1996 NARUC USOA. Accounting Instruction 2.A. of the NARUC USOA for Class B utilities states:

Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto. (emphasis added)

Further, Accounting Instruction 3.D. of the NARUC USOA for Class B utilities states:

The numbers prefixed to account titles are solely for convenience of reference and are not a part of the titles. Each utility may adopt such scheme of account numbers as it deems appropriate; provided, however, that it shall keep readily available a list of the account numbers and subdivisions of accounts which it uses and a reconciliation of such numbers and subdivisions with the account numbers and titles provided herein. Further, the records must be kept to permit classification or summarization of each accounting period according to the prescribed accounts. (emphasis added)

Rule 25-30.450, Florida Administrative Code, states:

In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc., supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules. (emphasis added)

Utilities, Inc. and its Florida subsidiaries have been cited in prior Commission Orders for failure to comply with one or both of the above-mentioned rules. (See Orders Nos. PSC-95-0574-FOF-WS, issued May 9, 1995, in Docket No. 940917-WS, Utilities, Inc. of Florida; PSC-97-0531-FOF-WU, issued May 9, 1997, in Docket No. 960444-WU, Lake Utility Services, Inc.; PSC-96-0910-FOF-WS, issued July 15, 1996, in Docket No. 951027-WS, Lake Placid Utilities, Inc.; and PSC-98-0524-FOF-SU, issued April 16, 1998, in Docket No. 971065-SU, Mid-County Services, Inc.)

In Order No. PSC-97-0531-FOF-WU, issued May 9, 1997, in Docket No. 960444-WU, this Commission stated:

Utilities, Inc., the parent utility of LUSI, owns a number of water and wastewater utilities under our

jurisdiction, in addition to those in other states. WSC maintains the books and records for all of Utilities, Inc.'s subsidiaries. In the two most recent rate cases filed by Utilities, Inc.'s subsidiaries in Florida, Lake Placid Utilities, Inc. and Utilities, Inc. of Florida, we found that the books and records were not in compliance with the NARUC Uniform System of Accounts. (See Order No. PSC-95-0574-FOF-WS, issued on May 9, 1995 in Docket No. 951027-WS and Order No. PSC-96-0910-FOF-WS, issued on July 15, 1996 in Docket No. 940917-WS, respectively). At this time, we are performing compliance audits on Lake Placid Utilities, Inc., Utilities, Inc. of Florida, and Mid-County Services, Inc. These audits are scheduled to be completed as of July 31, 1997. Id. at 47.

The above referenced compliance audit was completed, and, in the auditor's report, dated March 26, 1998, the auditors stated, in part:

In our opinion, because of the findings noted below, the utility's books and records are not maintained in conformity with the accounting practices prescribed by the Florida Public Service Commission...

Although the auditors' finding was that the utility was not in compliance, the dollar amounts of the errors were not considered sufficiently material to initiate a show cause action at that time.

In Order No. PSC-97-0531-FOF-WU, issued May 9, 1997, in Docket No. 960444-WU, discussed above, this Commission also stated:

Further, Utilities, Inc. is hereby placed on notice that all of its Florida utilities owned and/or purchased in the future that are under our jurisdiction shall become in compliance and/or continue to maintain their books and records in compliance with our rules and the NARUC Uniform Systems of Accounts. Other than the companies previously cited for non-compliance, the remaining Utilities, Inc. Commission regulated utilities shall be given until January 31, 1998 to bring their books and records into compliance with the NARUC Uniform System of Accounts and Rule 25-30.450, Florida Administrative Code.

The additional Florida subsidiaries are Alafaya Utilities, Inc., Miles Grant Water and Sewer Co., Tierre Verde Utilities, Inc., and Utilities Inc. of Longwood.

If, at the end of aforementioned period, any of these Commission regulated subsidiaries fail to be in substantial compliance, we shall immediately initiate proceedings requiring the utility to show cause why a fine should not be imposed. To ensure that all the Utilities, Inc. subsidiaries are placed on notice, each shall be provided a copy of this Order. Further, if the parent utility purchases any additional companies under our jurisdiction, the parent utility shall timely notify us if the purchased utility's books are not in compliance with NARUC. The utility shall then request a reasonable amount of time necessary to bring the books and records into compliance. Id. at 47, 48.

The audit report for the current proceeding states that, although the utility renumbered several accounts in its accounting system in 1998, the utility did not make a substantive change in its accounting system. An Arthur Andersen internal memorandum discussing the utility's conversion to the USOA dated December 9, 1998, states:

Per . . . Director of Accounting, for Utilities, Inc. (the Company), the conversion has been transparent to the financial statements. Conversion merely changed the account numbers within the general ledger (G/L). It did not change any balances in an individual G/L account. Therefore, all mapping from the old account to the new account was one to one (i.e., no rolling up of multiple old system accounts into the new system G/L account, nor any breaking down from one old account into multiple new accounts.)

Many of the problems that our audit staff encountered with the utility's accounting system in the current rate case audit are not caused by the "account number" in its accounting system. The problems that our audit staff encountered were caused by a complex utility accounting system that must be converted to the NARUC-required format for each rate proceeding that the utility brings

before us. This clearly is a violation of the requirements to keep the information readily available. Our audit staff had to request the utility to reconcile Accounts Nos. 620, 635, 641, and 675 of its filing because our staff was unable to tie the account balances to the utility's general ledger. The utility's response included 62 separate sub-account balances that were used to compile the balances in the respective accounts. Utility Account No. 675 now consists of 90 separate sub-accounts which encompass water and wastewater accounts. Many account titles included in Account 675 should be included in other NARUC USOA accounts.

Despite the state of the utility's books and records, our staff was able to perform the audit. However, the condition of the books and records resulted in significant excess time in the field and a corresponding delay in completing the audit report.

The errors identified by our auditors constitute apparent violations of Rule 25-30.115, Florida Administrative Code, "Uniform System of Accounts for Water and Wastewater Utilities" as well as an apparent violation of this Commission's mandate in Order No. PSC-97-0531-FOF-WU, requiring that all jurisdictional subsidiaries of Utilities, Inc. be brought into compliance with this rule.

Section 367.161, Florida Statutes, authorizes us 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 have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. In failing to maintain its books and records in conformance with the USOA, the utility's act was "willful" within the meaning and intent of Section 367.161, 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, Florida Administrative Code, 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. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

The utility's failure to keep its books and records in conformance with the NARUC USOA is an apparent violation of Rule 25-30.115, Florida Administrative Code, and the portion of Order No. PSC-97-0531-FOF-WU which required the utility to timely notify this Commission if a purchased utility's books are not in compliance with NARUC and to request a reasonable amount of time to bring the books into compliance. Therefore, we find that a show cause proceeding is warranted at this time. We find it appropriate to order the utility to show cause, in writing within 21 days of the issuance of this Order, why it should not be fined \$3,000 for its apparent violation of Rule 25-30.115, Florida Administrative Code, and Order No. PSC-97-0531-FOF-WU for its failure to maintain its books and records in conformance with the NARUC USOA.

The utility's response to this show cause order must contain specific allegations of fact and law. Should the utility file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings will be scheduled on this matter before a final determination is made. A failure to file a timely written response to this show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event the utility fails to file a timely response to the show cause order, the penalty is deemed assessed with no further action required. Reasonable collection efforts shall consist of two certified letters requesting payment. If the utility fails to respond to reasonable collection efforts by our staff, the collection of penalties shall be referred to the Comptroller's Office for further collection efforts. The referral to the Comptroller's Office shall be based on the conclusion that further collection efforts by this Commission would not be cost effective. If, however, the utility responds to the show cause by remitting the fine imposed, no further action is required. Any collection of the fines imposed shall be deposited in the State General Revenue Fund pursuant to Section 367.161, Florida Statutes.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that Wedgefield Utilities, Inc.'s application for an increase in water rates and charges is approved to the extent set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the schedules and attachments attached hereto are incorporated herein by reference. It is further

ORDERED that Wedgefield Utilities, Inc. shall file revised tariff sheets and a proposed customer notice to reflect our approved rates and charges within thirty days of the issuance date of the Consummating Order. Our staff will administratively approve the revised tariff sheets upon verification that the revised tariff sheets are consistent with this Order. It is further

ORDERED that the rates and charges approved herein shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, provided customers have received notice. It is further

ORDERED that the rates and charges shall not be implemented until our staff has approved the proposed customer notice, and the notice has been received by the customers. It is further

ORDERED that Wedgefield Utilities, Inc. shall provide proof of the date notice was given within 10 days after the date of the notice. It is further

ORDERED that Wedgefield Utilities, Inc. prepare monthly reports detailing the number of bills rendered, the consumption billed (by usage block for the residential class) and the revenue billed. These reports shall be provided, by customer class and meter size, on a quarterly basis for a period of two years, beginning with the first billing period after the increased rates go into effect. It is further

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ORDERED that Wedgefield Utilities, Inc. shall refund 8.85% of water revenues collected under interim rates. The refund shall be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. Wedgefield Utilities, Inc. shall to submit proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code, and shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), Florida Administrative Code. It is further

ORDERED that the Proposed Agency Action portions of this Order shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that Wedgefield Utilities, Inc. shall show cause, in writing within 21 days of the issuance of this Order, why it should not be fined \$3,000 for its apparent violation of Rule 25-30.115, Florida Administrative Code, and Order No. PSC-97-0531-FOF-WU for its failure to maintain its books and records in conformance with the NARUC USOA. It is further

ORDERED that Wedgefield Utilities, Inc.'s response to the show cause portion of this Order must contain specific allegations of fact and law. It is further

ORDERED that in the event Wedgefield Utilities, Inc. makes a request for a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings will be scheduled on this matter and this docket shall remain open pending the disposition of the show cause. It is further

ORDERED that in the event that Wedgefield Utilities, Inc. fails to file a timely written response to the show cause portion of this Order, such failure shall constitute an admission of the facts alleged herein, and a waiver of the right to a hearing, and the penalty is deemed assessed. It is further

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ORDERED that if reasonable collection efforts are unsuccessful, the collection of the penalties shall be forwarded to the Comptroller's Office for further collection efforts. It is further

ORDERED that in the event Wedgefield Utilities, Inc.'s responds to the show cause portion of this Order by remitting the fine set forth herein, no further action is required. It is further

ORDERED that any collection of the fine set forth herein shall be deposited in the State General Revenue Fund pursuant to Section 367.161, Florida Statutes. It is further

ORDERED that this docket shall remain open pending completion of these conditions: Wedgefield Utilities Inc.'s filing and our staff's approval of the revised tariff sheets; proof of notice; and verification of the refund. Further, this docket shall remain open pending disposition of the show cause portion of this Order. However, if Wedgefield Utilities, Inc. does not protest the show cause portion of this Order and remits the fine, this docket shall be administratively closed if no protest is filed to the Proposed Agency Action portion of this Order and upon completion of the above conditions.

By ORDER of the Florida Public Service Commission this 23rd day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

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(S E A L)

PAC

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.

As identified in the body of this Order, our actions, except for the initiation of show cause proceeding are preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 13, 2000. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

The show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the show cause portion of this Order may file a response within 21 days of issuance of the show cause

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portion of this Order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 13, 2000.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

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-00-2388-AS-WU
ISSUED: December 13, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
LILA A. JABER
BRAULIO L. BAEZ

ORDER DENYING MOTION FOR SUMMARY FINAL ORDER WITHOUT PREJUDICE,
GRANTING MOTION TO AMEND, DENYING MOTION TO STRIKE AND DISMISS,
AND ACCEPTING WEDGEFIELD'S SETTLEMENT OFFER

BY THE COMMISSION:

BACKGROUND

Wedgefield Utilities, Inc. (Wedgefield or utility) is a Class B utility which serves approximately 840 water and wastewater customers in Orange County, Florida. Wedgefield is a wholly-owned subsidiary of Utilities, Inc. In its annual report for 1998, the utility reported operating revenues of \$252,903.

Rate base was last established for Wedgefield's water facilities by Order No. PSC-98-1092-FOF-WS, (Transfer Order) issued August 12, 1998, in Dockets Nos. 960235-WS and 960283-WS, pursuant to a transfer of the utility's assets from Econ Utilities Corporation.

On November 12, 1999, Wedgefield filed an application for an increase in water rates. The utility was notified of several deficiencies in its minimum filing requirements (MFRs). Those deficiencies were corrected and the official filing date was established as February 29, 2000, pursuant to Section 367.083, Florida Statutes. The utility's requested test year for final and interim purposes is the historical year ended June 30, 1999. The

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DOCKET NO. 991437-WU
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utility requested that this case be processed using our Proposed Agency Action (PAA) procedure pursuant to Section 367.081(8), Florida Statutes.

By Order No. PSC-00-0910-PCO-WU, issued May 8, 2000, we suspended the rates requested by the utility pending final action and approved interim rates subject to refund and secured by a corporate undertaking. The interim rates were designed to allow the utility the opportunity to generate additional annual operating revenues of \$103,394 for its water operations (an increase of 40.19%).

Wedgfield requested water rates designed to generate annual operating revenues of \$404,098. Those revenues exceed test year revenues by \$144,889 or 55.87 percent. By Proposed Agency Action Order No. PSC-00-1528-PAA-WU, issued August 23, 2000, (PAA Order) we proposed a \$342,157 water revenue requirement for this utility, which represented an annual increase in revenue of \$82,897 or 31.97 percent.

Wedgfield was also ordered to show cause in writing within 21 days, why it should not be fined \$3,000 for its apparent violation of Rule 25-30.115, Florida Administrative Code, and Order No. PSC-97-0531-FOF-WU, issued May 9, 1995, in Docket No. 960444-WU, for its failure to maintain its books and records in conformance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA). Wedgfield filed a timely response to the order to show cause on September 13, 2000.

On September 13, 2000, Wedgfield also timely filed a petition protesting the PAA Order. On that same day, the Office of Public Counsel (OPC) timely filed a Notice of Intervention in this matter and a petition protesting the PAA Order. OPC's Notice of Intervention was acknowledged by Order No. PSC-00-1755-PCO-WU, issued September 26, 2000.

On October 3, 2000, Wedgfield filed a Motion to Strike and Dismiss the Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action. On November 3, 2000, Wedgfield filed a Motion for Summary Final Order and Motion to Amend its Motion to Strike and Dismiss. OPC filed a timely response on November 10, 2000.

We have jurisdiction pursuant to Sections 367.011(2) and 367.081, Florida Statutes.

Wedgfield's Motion for Summary Final Order

Wedgfield alleges that there is no genuine issue as to any material fact set forth in OPC's Petition and Protest regarding negative acquisition adjustment. Wedgfield further alleges that the negative acquisition adjustment issue, as well as the factual basis for OPC's Protest and Petition in this case, were fully litigated in the prior transfer proceeding. Wedgfield states that OPC makes no allegations of grounds justifying a negative acquisition adjustment, nor the existence of extraordinary circumstances. Therefore, Wedgfield argues that the entry of a summary final order on the issue of negative acquisition adjustment is appropriate in this case. Wedgfield summarily cites to Order No. PSC-00-0341-PCO-SU, issued February 18, 2000, in Docket No. 990975-SU, to support its proposition that the entry of a summary final order is appropriate in this case.

OPC's Response to Wedgfield's Motion for Summary Final Order

OPC asserts that we may change our policy affecting items in rate base as long as we base the change in policy on expert testimony, documentary, opinion, or other evidence, which OPC intends to provide in this proceeding. OPC cites to Florida Cities Water Company v. FPSC, 705 So. 2d 620 (Fla. 1st DCA 1998), to show that we have power to change our methodology if the decision is supported by record evidence. Likewise, OPC alleges that it is entitled to the opportunity to present evidence that will show us why we should change our policy.

OPC next cites to Section 120.68, Florida Statutes, for the proposition that we can take action inconsistent with prior agency practice if there is evidence in the record to support the change. OPC asserts that it will provide that record evidence in this case showing the reasons why we should not follow prior practice in this proceeding. OPC also cites to Section 350.0611, Florida Statutes, to show that it has the authority to raise the issue of negative acquisition adjustment again, even if inconsistent with positions that we have previously adopted.

OPC cites Commission precedent in support of their argument that we may change a prior decision on acquisition adjustment. In Order No. 23728, issued as a PAA Order November 11, 1990, and becoming final and effective without protest, in Docket No. 900291-WS, this Commission declined to recognize a negative acquisition adjustment. However, in that utility's subsequent rate proceeding, we reversed the prior decision by recognizing the negative acquisition adjustment for the purpose of setting rates. Order No. PSC-93-1675-FOF-WS, issued November 18, 1993, in Docket No. 920148-WS.

OPC also argues that we reversed a previous decision to allow a positive acquisition adjustment. See Order No. 23166, issued July 10, 1990, in Docket No. 891179-GU (Chesapeake Utilities Corp). In that case, this Commission found that the predicted savings upon which the positive acquisition adjustment was granted had not materialized and therefore, based on this new information, removed the acquisition adjustment from rate base.

Finally, OPC alleges that we can recognize an adjustment if we find a substantial change in circumstances from a prior case.

ANALYSIS

Pursuant to Section 120.57(1)(h), Florida Statutes, a summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order.

Rule 28-106.204(4), Florida Administrative Code, states that "[a]ny party may move for Summary Final Order whenever there is no genuine issue as to material fact"

Under Florida law, "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact, and . . . every possible inference must be drawn in favor of the party against whom a summary judgement is sought." Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993)(citing Wills v. Sears, Roebuck & Co., 351 So. 2d 29 (Fla. 1977)). Furthermore, "A summary judgment should not be granted

unless the facts are so crystallized that nothing remains but questions of law." Moore v. Morris, 475 So. 2d 666 (Fla. 1985).

OPC's Protest and Petition for hearing submitted the following disputed issue of material fact, policy and law:

Should the utility's rate base include a negative acquisition adjustment?

And what other changes, such as changes to depreciation expense, should be made to reflect a negative acquisition adjustment?

The issue of whether this utility's rate base should include a negative acquisition adjustment was addressed after hearing in Order No. PSC-98-1092-FOF-WS, issued August 12, 1998, in Docket No. 960235-WS (transfer docket). By that Order, we found that no extraordinary circumstances existed and held that no negative acquisition adjustment would be imposed. In that proceeding, we fully examined the condition of the assets, Econ as a "troubled utility," and whether any extraordinary circumstances existed.

OPC asserts that like the Florida Cities case, it has the right to an evidentiary hearing to support a change in our policy. We note that, in Florida Cities, the appeal and subsequent evidentiary hearing on remand arose from the Order stating our used and useful methodology. In the instant case, by Order No. PSC-96-1241-FOF-WS, issued October 7, 1996, in Docket No. 960235-WS, we made a proposed decision on the acquisition adjustment at issue here and an evidentiary hearing was held upon OPC's protest of that decision, which culminated in Order No. PSC-98-1092-FOF-WS. What OPC now seeks is to revisit that decision by protesting Order No. PSC-00-1528-PAA-WU, our recent PAA Order issued in this docket.

We agree that Section 350.0611(1), Florida Statutes, gives OPC standing to urge any position consistent or inconsistent with positions previously adopted by this Commission. However, we do not believe that the Statute gives OPC the right to overcome a Motion For Summary Final Order without alleging more than an inconsistent position.

OPC also cites to Order No. PSC-93-1675-FOF-WS, in which we reversed a previous finding on a negative acquisition adjustment. There, we reached our conclusion based on customer testimony, the need for repairs and improvements to the system at the time of the transfer, and the lack of responsibility in management. In Wedgefield's transfer docket, an evidentiary hearing was held after which we determined that a negative acquisition adjustment would not be imposed. Moreover, there has been no showing of any change in circumstances in the instant proceeding.

Next, OPC cites to Order No. 23166, in which we removed a positive acquisition adjustment after finding that the predicted savings had not materialized. Clearly, the approval of the original acquisition adjustment was based on predicted savings, and thus contingent upon those savings materializing. Once we found that the savings had not materialized, we removed the adjustment. Our decision in the Wedgefield transfer proceeding was not contingent upon the materialization of certain facts.

As stated throughout OPC's Response, OPC plans to provide evidence in this proceeding to support its assertions. Generally, "[i]t is not enough for the opposing party to merely assert that an issue does exist." Landers v. Milton, 370 So. 2d 368, 370 (Fla. 1979); See also Almand Construction Co. v. Evans, 547 So. 2d 626, 628 (Fla. 1989) (holding that counsel's mere assertion was insufficient to create an issue). However, we note 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). Accordingly, we deny Wedgefield's Motion for Summary Final Order without prejudice. Once testimony is filed in January, Wedgefield may renew its motion for Summary Final Order at that time.

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MOTION TO AMEND

On November 3, 2000, Wedgefield filed a Motion to Amend its Motion to Strike and Dismiss. In it, it requests that we take official notice of Order No. PSC-98-1092-FOF-WS. OPC did not file a response. Accordingly, Wedgefield's Motion to Amend its Motion to Strike and Dismiss is granted and official notice is taken of Order No. PSC-98-1092-FOF-WS.

MOTION TO STRIKE AND DISMISS

As stated above, on October 3, 2000, Wedgefield filed a Motion to Strike and Dismiss. The basis of the Motion is that OPC's Petition is barred by the doctrines of res judicata and collateral estoppel. OPC filed a timely response on October 13, 2000.

In reviewing a Motion for Summary Final Order, we may consider all documents on file in reaching our decision, including the Transfer Order. However, in reviewing a Motion to Dismiss, we are confined to the four corners of the initial pleading. See Moskovits v. Moskovits, 112 So. 2d 875, 878, (Fla. 1st DCA 1959). Based on the constraints of this standard, and consistent with our decision to deny Wedgefield's Motion for Summary Final Order, we deny Wedgefield's Motion to Strike and Dismiss.

OFFER OF SETTLEMENT

By Order No. PSC-00-1528-PAA-WU, we ordered Wedgefield to show cause in writing within 21 days, why it should not be fined \$3,000 for its apparent violation of Rule 25-30.115, Florida Administrative Code, and Order No. PSC-97-0531-FOF-WU, issued May 9, 1995, in Docket No. 960444-WU, for its failure to maintain its books and records in conformance with the NARUC USOA.

On September 13, 2000, the utility filed its Response and Petition on Final Order Initiating A Show Cause (Response). In its Response, the utility requested that we:

- (a) Waive the \$3,000 fine imposed by this Order to Show Cause;

(b) Allow the utility to work with staff to resolve any discrepancies remaining after the 1998 modifications of its accounting system, and direct staff to perform a compliance audit of the books and records as they exist as of January 31, 2001;

© If (a) is not approved by the Commission, the Commission is hereby requested to hold a formal hearing pursuant to §120.57(1), Florida Statutes, on the show cause portions of the above-referenced Order; and

(d) Grant such other and further relief as the Commission may deem appropriate.

In its Response, the utility acknowledged that some additional time may have been required by our staff, but that our staff did not remain at the utility's office for any longer than the two-week period originally allotted by our staff to perform the audit. Moreover, the use of any accounting system that may require conversion of the format of certain accounts does not necessarily violate the requirements to keep information readily available. However, the utility did recognize that a few accounts, especially Accounts Nos. 620 and 675, may not be in total compliance with the NARUC USOA. Although the utility believes that its books and records are in substantial compliance with the NARUC USOA, it promised to sufficiently correct these differences by January 31, 2001, if given some guidance by our audit staff.

We disagree with certain allegations made in Wedgefield's Response. First, our auditors noted that the length of time they needed to complete the Wedgefield audit report was not limited to the amount of time they spent at the utility's offices. Our auditors spent a considerable amount of time reconciling the MFRs to its books and records before going to the utility's office and during their on-site investigation.

Our auditors also disputed the assertion that the Electronic Data Processing (EDP) tapes were provided on a timely basis. Our auditors requested the tapes on November 4, 1999, and the utility did not provide a usable copy until March 1, 2000. Moreover, the use of EDP information to reconcile the utility's MFRs to its books and records is of limited use because many of the account balances

contained in the MFRs are adjusted book balances which were calculated specifically for the current filing.

On October 20, 2000, our staff held an informal meeting with the utility and OPC. At this meeting, our staff informed the utility of specific deficiencies which need to be corrected to bring the books of the utility and Utilities, Inc., its parent company, into compliance. Our staff believed that the utility should be willing to pay a monetary fine in the amount of at least \$1,000 because of its parent company's history of non-compliance with the NARUC USOA. In addition, on October 23, 2000, our staff sent a letter to the utility outlining the above information.

On October 31, 2000, the utility filed a letter, stating that while it acknowledges that some additional time was required for our auditors to reconcile various accounts, it does not believe that this resulted in a delay in issuing the audit report. Further, the utility disagrees with our auditors' assertion that EDP tapes were not provided in a timely manner. Moreover, the utility maintains its position that any monetary penalty should be waived because of the significant good faith effort made to modify its books and records to bring it into compliance with our interpretation of NARUC USOA. While Wedgefield has acknowledged that there are still several accounts which are not in compliance with NARUC USOA, it believes that its books and records are in substantial compliance. On October 30, 2000, the utility filed its direct testimony, which is consistent with its Response and its letter.

The utility has agreed that, in future rate cases, it will begin its MFRs with the actual book balances and adjust from those amounts. Further, the utility requested that our staff be directed to perform a compliance audit of the utility's books and records as of January 31, 2001. The utility has further committed to work with our staff to correct any specific issues raised in the future.

Our auditors will provide guidance to the utility to correct the differences between its books and records and the NARUC USOA. However, such guidance shall not be used to preclude a finding of noncompliance with our rules in a future proceeding before this Commission. Furthermore, the utility and its parent company shall be required to begin its MFRs with the utility's book balances with

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all adjustments made after the "per book" column. Moreover, a compliance audit shall be performed on the utility's parent company operations and on a representative sample of its Florida operations after the utility's books are closed and its financial statements have been issued for the fiscal year end.

We note that in Order No. PSC-00-1528-PAA-WU, the utility did not respond to Audit Exception No. 1, which states that the utility did not maintain its accounts in compliance with NARUC accounting. However, we have analyzed the utility's Response, letter, and direct testimony on this issue. Based upon this analysis, we find that the utility has made substantial progress in correcting the problems identified in previous orders. We find that the utility's actions and commitments are sufficient to achieve the desired goals of efficient analysis of its MFRs and efficient audits. Therefore, a monetary fine is unnecessary to ensure future compliance with our Rules and Orders.

Based on the foregoing, we hereby accept Wedgefield's offer of settlement made in response to Order No. PSC-00-1528-PAA-WU, requiring the utility to show cause as to why it should not be fined \$3,000 for its apparent violation of Rule 25-30.115, Florida Administrative Code, and Order No. PSC-97-0531-FOF-WU. Therefore, the \$3,000 fine shall be permanently suspended. The utility shall correct any remaining areas of noncompliance with the NARUC USOA by January 31, 2001. Further, the utility and its parent shall file, in future proceedings before this Commission, MFRs which begin with utility book balances, and show all adjustments to book balances after the "per book" column in the MFRs. The utility shall file with its MFRs, a statement which affirms that the MFRs begin with actual book balances.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Summary Final Order filed by Wedgefield Utilities, Inc. is hereby denied without prejudice. It is further

ORDERED that Wedgefield Utilities Inc.'s Motion to Amend Wedgefield's Motion to Strike and Dismiss is hereby granted. It is further

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ORDERED that Wedgefield Utilities Inc.'s Motion to Strike and Dismiss is denied. It is further

ORDERED that the offer of settlement filed by Wedgefield Utilities Inc. is accepted. It is further

ORDERED that the \$3000 fine is permanently suspended.

By ORDER of the Florida Public Service Commission this 13th day of December, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

JKF

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 denying Motion for Summary Final Order without prejudice, granting Motion to Amend Motion to Strike and Dismiss, and Denying Motion to Strike and Dismiss, 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 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.

Any party adversely affected by the Commission's final action accepting settlement offer in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ITEM #

AUDIT OBJECTIVE OR QUESTION
(Add supplemental background for auditor)

Prior to audit planning, set up a conference with Jan Kyle and other ECR staff to discuss priorities, strategy, and current status of other issues in the case.