

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

Filed: June 25, 2001

RENEWAL OF WEDGEFIELD'S  
MOTION FOR SUMMARY FINAL ORDER

Wedgefield Utilities, Inc. ("Wedgefield" or "the Utility") hereby files its Renewal of Motion for Summary Final Order, and in support thereof states:

1. On December 13, 2000, The Florida Public Service Commission entered its Order No. PSC-00-2388-AS-WU in this docket. The Order was titled 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.

2. Because the dismissal was without prejudice, Wedgefield has leave to renew matters initially decided by that Order.

3. Order No. PSC-00-2388-AS-WU, the Order Denying Motion, pointed out that:

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 not exist.' Landers v. Milton, 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 Makets, 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 [2001], Wedgefield may renew its motion for Summary Final Order at that time. [Emphasis added. Order No. PSC-00-2388-AS-WU, page 6.]

Furthermore, the Order Denying Motion specifically stated that:

... Our decision in the Wedgefield transfer proceeding [Docket No. 960235-WS, final Order No. PSC-98-1092-FOF-WS, issued August 13, 1998] was not contingent upon the materialization of certain facts. [Emphasis added. See, Order No. PSC-00-2388-AS-WU.]

4. The Order specifically held that the motion could be refiled after testimony had been filed in this case. The schedule from the Order Establishing Procedure was last revised to require that the Intervenor (OPC) testimony be filed by May 14, Staff testimony be filed by May 31, and all rebuttal testimony be filed by June 11, 2001. All testimony was filed on time.

5. During the more than 6 months since the Order Denying Motion was issued on December 13, 2000, OPC has filed four Sets of Discovery, including 31 numbered interrogatories and 15 numbered requests for production. The actual magnitude of OPC's discovery was much broader than those numbers indicate, because much of the numbered discovery included multiple subparts.

6. Pursuant to Order No. PSC-00-2388-AS-WU, it is now an appropriate time to renew the Motion for Summary Final Order.

## BACKGROUND

7. On August 12, 1998, the Florida Public Service Commission issued its final Order No. PSC-98-1092-FOF-WS in Docket No. 960235-WS approving the transfer of the Utility from Econ Utilities Corporation to Wedgefield Utilities, Inc. A certified copy of that Order or has previously been filed with the Commission as Attachment "A" to the original Motion for Summary Final Order.

8. Copies of all Attachments cited in and attached to Wedgefield's Motion for Summary Final Order (filed November 3, 2000) and its Motion to Strike and Dismiss (filed October 3, 2000) were filed with those motions. The Attachments are referred to and incorporated herein by the same identification, but duplicate copies are not filed herewith. If any party needs duplicate copies of the Attachments, they can obtain them by contacting the undersigned attorney.

9. As a part of that transfer proceeding (originally filed in 1996 and decided in 1998) the issue of negative acquisition adjustment was raised by the Office of Public Counsel (OPC). That issue was fully litigated, hearings were held thereon, customer and expert witnesses testified, 18 exhibits were submitted on behalf of the various parties, and the issues were the subject of extensive post-hearing briefs. The Commission's final Order approving the transfer denied OPC's petition for a negative acquisition adjustment.

10. The Office of Public Counsel did not seek reconsideration of that final Order No. PSC-98-1092-FOF-WS by the Commission, nor did OPC seek appellate review of that final Order or any other order of the Commission in that case. The Order is 32 pages in

length, and the issue of negative acquisition adjustment was considered and discussed on pages 5 through 22, inclusive, of that Order.

11. On November 12, 1999, over a year after Order No. PSC-98-1092-FOF-WS was issued by the Commission, Wedgefield Utilities filed its petition for a rate increase for its water system at Wedgefield. The current Docket (No. 991437-WU) was opened, and on August 23, 2000, the Commission entered its Proposed Agency Action Order No. PSC-00-1528-PAA-WU (the PAA Order) in this Docket.

12. On September 13, 2000, the Office of Public Counsel (OPC) filed its Notice of Intervention and its Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action. The only matter which OPC attempted to raise for resolution as a “disputed issue” in this second case was “Should the Utility’s rate base include a negative acquisition adjustment?” The OPC Petition also stated the obvious fall-out question “What other changes, such as changes to depreciation expense, should be made to reflect a negative acquisition adjustment?” See OPC Petition, paragraph 5.

13. On October 3, 2000, Wedgefield Utilities, Inc. filed its Motion to Strike and Dismiss the Office of Public Counsel’s Petition Requesting Section 12.057 Hearing and Protest of Proposed Agency Action (hereinafter referred to as the Motion to Strike and Dismiss). In support thereof, Wedgefield relied upon res judicata, collateral estoppel, stare decisis, and administrative finality.

14. After due consideration, on October 26, 2000, the Staff of the Florida Public Service Commission filed its written Recommendation on Wedgefield’s Motion to Strike

and Dismiss. Staff recommended that Wedgefield's Motion be granted.

(Recommendation, Issue 1, Page 3.) Five days later, on October 31, 2000, Commission Staff filed a second written recommendation on Wedgefield's Motion to Strike and Dismiss. Staff took the almost unprecedented action of making changes in a Staff recommendation. Staff went even further and reversed its previous recommendation to grant Wedgefield's motion, and in the second recommendation Staff recommended denial of that Motion.

15. Wedgefield adopts, as if set forth verbatim herein, the allegations set forth in its Renewal of Motion to Strike and Dismiss the Office of Public Counsel's Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action which was filed on October 3, 2000, as amended.

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16. For the purposes of its Renewal of Motion for Summary Final Order, Wedgefield adopts the allegations set forth in the preceding paragraphs 1 - 15, and adopts the allegations set forth in its Renewal of Motion to Strike and Dismiss, as amended, filed simultaneously herewith.

17. In regard to negative acquisition adjustment, there is no genuine issue as to any material fact set forth in the OPC Petition and Protest. None has been alleged by OPC. None has been stated in its Petition and Protest filed on September 13, 2000. None has been raised in any other matter before the Commission in this proceeding. All disputed issues of material fact in relation to the negative acquisition adjustment, the only issue raised by OPC in its current Petition and Protest, were fully litigated in the prior transfer proceeding, Docket No. 960235-WS, in which final Order No. PSC-98-1092-FOF-WS was issued on August 12, 1998, denying OPC's request to impose a negative acquisition adjustment.

18. Rule 28-106.204(4), F.A.C, states that:

Any party may move for Summary Final Order whenever  
there is no genuine issue as to material fact. . . .

The rule does not set any time limit on the filing of a motion for summary final order.

19. The factual basis for the OPC Protest and Petition in this case has been resolved previously by the Commission in its Final Order Approving Transfer to Wedgefield Utilities, Inc. See Final Order No. PSC-98-1092-FOF-WS issued on August 12,

1998. The OPC Protest and Petition makes no allegations of grounds justifying a negative acquisition adjustment, much less meeting the requirements of showing that extraordinary circumstances exist which might otherwise justify a negative acquisition adjustment. That matter has already been litigated, and no extraordinary circumstances were found to exist. There was no factual or legal basis for imposing a negative acquisition adjustment.

20. In an effort to re-try the case in this proceeding, the Office of Public Counsel has previously and informally requested Wedgefield to stipulate to the introduction of the entire record from the prior proceeding. Such request begs the question of whether or not this case should be retried again on the same issue.

21. In its previous Motion to Strike and Dismiss (which Wedgefield renews by Motion filed simultaneously herewith), Wedgefield discusses at length the prior proceeding in which the issue of negative acquisition adjustment was raised by OPC, was fully litigated, and was decided by the Commission. The docket number and final order number are cited in that Motion. A similar case, Cypress Lakes Utilities, Inc. in which OPC intervened and raised the issue of negative acquisition adjustment, is also cited by docket number and final order number in the Renewal of Motion to Strike and Dismiss. Both cases are discussed in significant detail in their applicability to the current case. The Motion to Strike and Dismiss also references over 100 other cases which had been decided by the Public Service Commission on this issue of acquisition adjustment.

22. There is no genuine issue as to any material fact in this proceeding relating to negative acquisition adjustment. Therefore, the entry of a summary final order is not only

appropriate, it is required in this case. In re Bonita Country Club Utilities, Inc., Docket No. 990975-WU, Order No. PSC-00-0341-PCO-SU, 00 FPSC 2:353, issued February 18, 2000. Neither the discovery request of OPC, nor the testimony filed by OPC in this case, address the issue of extraordinary circumstances, allege that new evidence now supports the existence of extraordinary circumstances, or allege that the Commission erred in its finding in Order No. PSC-98-1092-FOF-WS that extraordinary circumstances do not exist. Order No. PSC-98-1092-FOF-WS made it clear that a finding that extraordinary circumstances exists was a prerequisite for a finding imposing a negative acquisition adjustment in the Wedgefield case.

23. A certified copy of the Commission's Order determining that no negative acquisition adjustment was appropriate for this utility (Order No. PSC-98-1092-FOF-WS issued August 12, 1998 in Docket No. 960235-WS) was previously filed with the Commission with the original Motion for Summary Final Order.

24. As required by Rule 28-106-204(3), F.A.C., the undersigned counsel has contacted Mr. Charles Beck for OPC and Mr. Jason Fudge for PSC Staff. OPC will file a response in opposition, and Staff reserves objections to the motion until they have had an opportunity to review it.



WHEREFORE, Wedgefield Utilities, Inc. moves for the entry of a summary final order in Docket No. 991437-WU, which would determine that there is no material issue of fact as to negative acquisition adjustment. The Office of Public Counsel has presented testimony on other issues raised in the protest to the Proposed Agency Action Order, and can be heard on those issues only.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent to the following by U.S. mail (or by hand delivery \*) this 25<sup>th</sup> day of June, 2001

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