

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of Certificates Nos. 404-W and
341-S in Orange County from Econ
Utilities Corporation to
Wedgfield Utilities, Inc.

DOCKET NO. 960235-WS

In re: Application for amendment
of Certificates Nos. 404-W and
341-S in Orange County by
Wedgfield Utilities, Inc.

DOCKET NO. 960283-WS
ORDER NO. PSC-98-0392-PCO-WS
ISSUED: March 16, 1998

ORDER DENYING MOTION TO SUPPLEMENT TESTIMONY

In Order No. PSC-96-1241-FOF-WS, issued October 7, 1996, this Commission, by final agency action, approved the transfer of Certificates Nos. 404-W and 341-S from Econ Utilities Corporation (Econ) to Wedgfield Utilities, Inc. (Wedgfield or utility) and also granted an amendment of the certificates to include additional territory in Orange County. By that same order, the Commission, by proposed agency action, established rate base for purposes of the transfer. On October 28, 1996, the Office of Public Counsel (OPC) timely protested the Order. Accordingly, this matter has been scheduled for a March 19, 1998 administrative hearing.

On August 11, 1997, Prehearing Order No. PSC-97-0952-PHO-WS was issued, identifying the relevant issues, witnesses and exhibits. Among the issues identified in the Prehearing Order was Issue No. 8, which asks who bears the burden of proving whether an acquisition adjustment should be included in rate base.

On February 17, 1998, Wedgfield filed a Motion to File Supplemental Testimony and Exhibits on Burden of Proof (Motion). In its Motion, the utility alleges that Commission staff has taken a position on burden of proof, without support of its own testimony and after all testimony deadlines had passed, that is contrary to established Commission policy. The proposed supplemental testimony and exhibits Wedgfield seeks to file in this matter address staff's position on Issue 8 and contain a legal analysis of past Commission orders addressing acquisition adjustments. No response was filed to Wedgfield's motion, and the time for filing such has expired.

DOCUMENT NUMBER-DATE

03216 MAR 16 98

FPSC RECORDS/REPORTING

Pursuant to Order No. PSC-97-0070-PCO-WS, *Order Granting Continuance and Revising Order on Procedure*, issued January 22, 1997, Wedgefield was required to file its direct testimony and exhibits by March 21, 1997 and its rebuttal testimony and exhibits by May 13, 1997. Pursuant to Order No. PSC-96-1533-PCO-WS, *Order Establishing Procedure*, issued December 17, 1996, the failure to timely prefile testimony and exhibits from any witness may bar admission of such testimony and exhibits.

Furthermore, the issue and staff's position on burden of proof were identified, at the latest, during the August 4, 1997 prehearing conference. The concerns raised by Wedgefield's counsel at the prehearing conference are substantially identical to those raised in the proposed supplemental testimony now at issue. In addition, Wedgefield failed to file a motion for reconsideration or cross-motion for reconsideration, or otherwise raise concerns regarding the issue of burden of proof.

The fact that counsel for Wedgefield expressed the same concerns at the prehearing conference that are raised in its Motion to Supplement Testimony indicates that the utility was on notice as to the issue and staff's position prior to the prehearing conference. Neither the issue nor staff's position has changed since the prehearing conference, and Wedgefield has provided no explanation as to why it failed to file a motion for reconsideration to the prehearing order, or why the instant motion was not filed prior to February 17, 1998, one month prior to the scheduled hearing in this case. Accordingly, based on the pleadings, I find that the utility's motion is untimely and inappropriate.

In addition, the issue on burden of proof for which Wedgefield seeks to file supplemental testimony is purely a legal matter and is not an appropriate matter for testimony. Testimony should address factual, evidentiary matters, and the information contained in the proposed supplemental testimony would be more properly raised and discussed in Wedgefield's legal brief, which should be filed following the conclusion of the evidentiary hearing in this case.

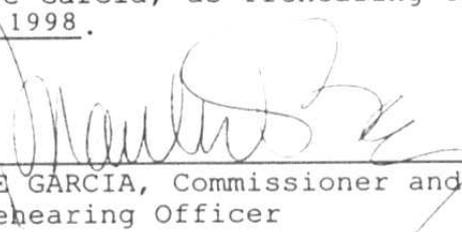
For the reasons discussed above, Wedgefield's Motion to Supplement Testimony is hereby denied.

Based on the foregoing, it is

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ORDERED by Commissioner Joe Garcia, as Prehearing Officer,
that Wedgefield's Motion to Supplement Testimony is denied.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer,
this 16th day of March, 1998.



JOE GARCIA, Commissioner and
Prehearing Officer

ACCT. TD:

(S E A L)

JSB

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.

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 25-22.038(2), 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.