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PUBLIC COUNSEL

STATE OF FLORIDA  
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ORIGINAL  
FILE COPY

November 12, 1996

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-referenced docket are the original and 15 copies of Citizen's Motion to Strike Wedgefield's "Contingent Request for Hearing".

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*  
Charles J. Beck  
Deputy Public Counsel

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_ CJB:bsr
- CTR \_\_\_\_\_ Enclosure
- EAG \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- LIN 5 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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. )  
)  
)  
)  
)  
)

Docket No. 960235-WS  
Filed: November 12, 1996

In Re: Application for  
Amendment of Certificates Nos.  
404-W and 341-S in Orange County  
by Wedgefield Utilities, Inc. )  
)  
)  
)  
)

Docket No. 960283-WS  
Filed: November 12, 1996

MOTION TO STRIKE WEDGEFIELD'S "CONTINGENT REQUEST FOR HEARING"

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Prehearing Officer to strike the "Contingent Request for Hearing on Order No. PSC-96-1241-FOF-WS, Including the Approval of Transfer and the Grant of Additional Authority" filed by Utilities, Inc., and Wedgefield Utilities, Inc. on October 28, 1996.

Wedgefield fails to identify any disputed issue of fact or other dispute with the Commission's order

1. One of the most remarkable aspects of Wedgefield's contingent request for hearing is its complete lack of any allegation disputing the findings contained in the Commission's order. Wedgefield agrees with the way the Commission resolved the issues and ultimately seeks final agency action resolving issues exactly the way the Commission

has already done so. It is therefore no surprise that Wedgefield failed to raise any disputed issue of fact, since it has no facts to allege that are different from the facts contained in the Commission's order.

2. Rule 25-22.036(7), Florida Administrative Code, requires the initial pleading by parties to show, among other things, (1) an explanation of how his or her substantial interests will be or are affected by the Commission determination, (2) a statement of all known disputed issues of material fact (or if there are none, to so indicate), and (3) a concise statement of the ultimate facts alleged. Wedgefield failed to comply with these any of these requirements. Its contingent request for hearing should therefore be stricken.

**There is no such thing as a contingent request for hearing**

3. Commission rules do not allow a "contingent" request for hearing. The moving party must show disputed issues in order to be entitled to a hearing. The "contingency" alleged by Wedgefield has nothing to do with the Commission's order, but instead rests upon the exercise of due process rights by other parties. The right to a hearing, however, must rest upon the decision made by the Commission, not the decisions made by other parties. Since Wedgefield has shown no dispute with the conclusions made by the Commission, it is not adversely affected and is not entitled to a hearing. The order granted the relief sought by Wedgefield.

The sale of assets is not contingent on the value of the rate base

4. Although the asset purchase agreement dated January 17, 1996, between Econ Utilities Corporation and Utilities, Inc., could have been made contingent on the rate base determination by the Commission, it was not. The parties chose not to make the rate determination such a contingency. In fact, the offer by Utilities, Inc., to Econ Utilities Corporation (attached to this pleading as exhibit A) shows that uncertainty about the rate base directly affected the purchase price. The offer states in part:

"Obviously, the uncertainty concerning the value of the rate base that will be ultimately be determined by the Commission (as opposed to the value estimated by your company or recommended (by) the PSC Staff) must be reflected in our purchase proposal"

Having received the benefit of offering a lower purchase price because of uncertainty about the rate base to be determined by the Commission, Wedgefield now wishes to have the Commission rewrite the contract and allow it to rescind the contract if it does not ultimately receive the rate base determination it wants. It is too late for that. Having received the benefit of the lower purchase price based on the uncertainty of the rate base value, it has waived its opportunity to raise that issue as a way of rescinding the contract.

**Wedgefield's contingent request for hearing violates its contract with Econ**

5. Article V of the asset purchase agreement requires Wedgefield to use its best efforts to obtain approval of the agreement from the Commission. The Commission's order approves the request, yet it is now Wedgefield that seeks to raise an issue contesting the approval. By raising an issue that could possibly undo the approval already given by the Commission, Wedgefield violates its contractual obligation to use its best efforts to obtain approval of the contract from the Commission.

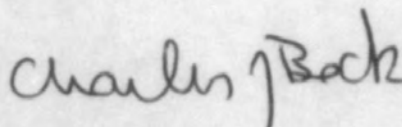
**Wedgefield's contingent request for hearing is an untimely attempt to move for reconsideration**

6. The Commission approved the transfer of the certificates from Econ to Wedgefield as final agency action. To the extent Wedgefield could show an adverse affect from that order, its proper remedy would have been the filing of a motion for reconsideration. Pursuant to rule 25-22.050, Florida Administrative Code, such motions must be filed within 15 days after issuance of the order. Failure to file a timely motion for reconsideration constitutes a waiver of the right to do so. Wedgefield failed to file such a motion. In addition, even if its contingent request for hearing were generously considered as such a motion, it still missed the filing deadline for filing such a motion. Its contingent request for hearing should therefore be stricken.

**WHEREFORE**, the Citizens request the Prehearing Officer to strike Wedgefield's contingent request for hearing filed on October 28, 1996..

Respectfully submitted,

JACK SHREVE  
Public Counsel

A handwritten signature in cursive script that reads "Charles J. Beck".

Charles J. Beck  
Deputy Public Counsel

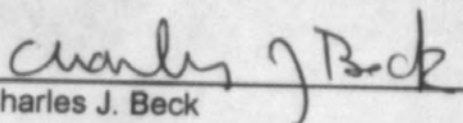
Office of Public Counsel

c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

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 12th day of November, 1996.

  
Charles J. Beck

Alice Crosby  
Fla. Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Econ Utilities Corporation  
664 South Military Trail  
Deerfield Beach, FL  
33442-3023

Ben Girtman  
1020 E. Lafayette St., #207  
Tallahassee, FL 32301-4542

Utilities, Inc. Of Florida  
200 Weathersfield Avenue  
Altamonte Springs, FL  
32714-4099

Wedgefield Utilities, Inc.  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714-4099

# UTILITIES, INC.

2335 Sanders Road  
Northbrook, Illinois 60062-6196  
708/498-6440  
FAX 708/498-2066

P30-2

App.

October 23, 1995

Mr. John O. Forrer  
Chairman  
Econ Utilities Corporation  
664 South Military Trail  
Deerfield Beach, Fl 33442

Dear Mr. Forrer:

This letter will confirm our proposal for the purchase of the water and sewer assets of Econ Utilities Corporation. Our offer is based in part on the information contained in the March 15, 1995 Earnings Review and Audit Report by the Florida Public Service Commission. The audit report indicates a substantial rate base but does not address non-used and useful plant. Furthermore, the audit indicates that the utility suffered an operating loss of approximately \$180,000 in 1994.

We have also reviewed your 1994 Annual Report, which I understand from your letter of August 8, 1995 has been revised to reflect changes made by the PSC auditors. I gather that it is your belief that the revised schedule showing a year-end rate base of \$1,060,104 is still in error in that it overstates non-used and useful plant and accumulated depreciation by about \$1 million.

Obviously, the uncertainty concerning the value of the rate base that will ultimately be determined by the Commission (as opposed to the value estimated by your company or recommended the PSC Staff) must be reflected in our purchase proposal.

Our proposal also factors in the cost projections contained in the Comprehensive Evaluation prepared by John B. Webb & Associates. As was also affirmed in your March 15, 1995 letter, the utility facilities are in need of timely upgrades and capacity expansions requiring immediate capital expenditures in the neighborhood of \$900,000. We recognize that the additional investment for these improvements will increase the rate base.

Irrespective of the exact amount of the current rate base, to make this operation profitable, the utility is in critical need of immediate and substantial rate relief. Based on the sizable investment in net utility plant, as well as the high operating costs necessary to provide service, it would certainly appear that the Commission would have just cause to approve a significant increase in rates.

Unfortunately, utility decisions are invariably affected by local politics. Judging from the past Commission hearings there appear to be a few vocal customers in your service area who would mount an opposition to any request for rate relief.

Although we are prepared to make a straight cash purchase proposal for the utility based on the estimated rate base and the current rate structure in place, we are also prepared to offer a contingent purchase proposal based on the revenue percentage increase approved in a rate case to be immediately filed in a joint application by both our companies. Accordingly, we are prepared to make either of the following purchase proposals:

EXHIBIT A



- 1) Cash in the amount of Five Hundred Forty Five Thousand Dollars (\$545,000) for the assets of the utility system, free and clear of all liens and encumbrances. Payment would be made at closing which would take place within 30 (thirty) days of execution of a Purchase Agreement. At that time we would file for approval of the certificate transfer before the Commission. Pending Commission approval, we would assume interim responsibility of the utility operations under a management contract. Under this alternative, the purchase consideration would not be dependent upon the filing or favorable outcome of a rate case.
- 2) An initial cash purchase payment in the amount of Four Hundred Thousand Dollars (\$400,000) for the assets of the utility system, free and clear of all liens and encumbrances. As in the straight cash purchase proposal above, payment would be made at closing, which would take place within 30 (thirty) days of execution of a Purchase Agreement. At the closing we would also assume interim responsibility of the utility operations under a management contract. At the same time we would file a joint application for approval of the certificate as well as a joint rate case application. Upon approval of the transfer and issuance of a rate case order, we would make an additional contingent purchase payment depending on the percentage revenue increase granted. The amount of the contingent payment would be based on the following schedule:

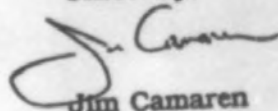
Contingent Payment Amount Per Percentage Revenue Increase						
40%	50%	60%	70%	80%	90%	100%
\$300,000	\$350,000	\$400,000	\$450,000	\$500,000	\$550,000	\$600,000

Based on our preliminary inspection of this system, both alternatives offers are being made for the utility in "as is" condition. It will be our responsibility to complete any required improvements to the facilities in a professional manner and on a timely basis.

If either purchase offer is acceptable, please indicate your interest by November 3, 1995. We can prepare a formal purchase agreement for your review and execution within ten (10) working days of your notification of acceptance. The terms of either Purchase Agreement will be simple and straightforward with limited representations and warranties, we are in a position to complete the purchase within one week after Commission approval has been obtained. We would hope that such regulatory approval could be obtained within 90 to 120 days.

If you have any questions or concerns, please contact me directly. I will await your reply.

Sincerely,

  
Jim Camaren  
Vice Chairman