

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2 TESTIMONY OF CARL WENZ
3 REGARDING APPLICATION FOR TRANSFER OF
4 ECON UTILITIES TO WEDGEFIELD UTILITIES
5 DOCKET NOS. 960235 WS & 960283-WS
6 Q. Mr. Wenz, please state your business address for
7 the record:
8 A. 2335 Sanders Road, Northbrook, Illinois, 60062.
9 Q. By whom are you employed and what is your position?
10 A. I am the Vice President of Regulatory Matters for
11 Utilities, Inc. and all of its subsidiaries,
12 including Wedgefield Utilities, Inc.
13 Q. Please state your professional and educational
14 experience.
15 A. I have been employed by Utilities, Inc. since 1984.
16 Over the last ten years I have been involved in all
17 phases of the regulatory process. Utilities, Inc.
18 owns water and/or wastewater utilities in fifteen
19 states. I have testified before the Commissions in
20 several states, including Florida, North Carolina,
21 South Carolina, Louisiana, Illinois, Indiana,
22 Nevada and Maryland. In my present position I am
23 responsible for all aspects of utility commission
24 regulation for the group of 55 Utilities, Inc.
25 subsidiaries.

1 I am a Certified Public Accountant and hold a
2 Bachelors Degree in Business Administration from
3 Western Michigan University. I have attended
4 several utility regulation seminars sponsored by
5 NARUC and Arthur Andersen LLP. For the last three
6 years I have been on the facul'y of Eastern Utility
7 Rate School which is sponsored by the NARUC Water
8 Committee and Florida State University.

9 Q. What is the purpose of your testimony here today?
10 A. I am here to sponsor the Company's applications for
11 transfer of water and wastewater certificates,
12 particularly as they relate to the matter of
13 acquisition adjustment. There are several motions
14 currently pending on behalf of Wedgefield
15 Utilities, but the prehearing order requires the
16 applicant to file testimony by January 6, 1997,
17 even though our motions have not yet been ruled
18 upon. Therefore, it is presently unclear whether
19 the scope of this testimony should include the
20 transfer, the extension of territory, or the
21 question of acquisition adjustment. The most
22 recent staff recommendation seems to indicate that,
23 if a hearing is held, it will be only on the matter
24 of an acquisition adjustment. Therefore, this
25 testimony is being filed to include only that one

1 matter.

2 Q. What is Wedgefield's position on the matter of
3 negative acquisition adjustment?

4 A. Commission Order No. PSC-96-1241-FOF-WS issued on
5 October 7, 1996, addresses the question of
6 acquisition adjustment and states: "In the absence
7 of extraordinary circumstances, it has been
8 Commission policy that the purchase of a utility at
9 a premium or discount shall not affect the rate
10 base calculation. Considering the likely impact of
11 used and useful adjustments for this utility, the
12 circumstances of this instance do not appear to be
13 extraordinary. Therefore, no acquisition
14 adjustment is included in the rate base
15 calculation." It is Wedgefield's position that no
16 acquisition adjustment should be included in rate
17 base in the current proceeding.

18 Q. If OPC is seeking to challenge the current
19 Commission policy on acquisition adjustments, is
20 this the appropriate type of proceeding in which to
21 do so?

22 A. No, it is not. It still is not clear whether the
23 Office of Public Counsel seeks to challenge the
24 overall Commission policy on acquisition
25 adjustments or whether it is merely alleging that

1 extraordinary circumstances exist in this case
2 which would warrant a negative acquisition
3 adjustment. None of their pleadings have alleged
4 that sufficient circumstances (whether referred to
5 as "exceptional" or "extraordinary" circumstances)
6 exist in this case.

7 Q. What if it turns out that the OPC is trying to
8 challenge the overall Commission policy on
9 acquisition adjustments?

10 A. It is my understanding that the "case-by-case"
11 approach can no longer be followed under Florida
12 law. To change the existing policy, the Commission
13 would have to initiate a generic proceeding,
14 particularly in view of the fact that the
15 Commission has previously and thoroughly addressed
16 this question of acquisition adjustments in 1989 in
17 its Docket No. 891309-WS. (See Order Nos. 22361,
18 23376 and 25729.) See also Docket No. 911082-WS,
19 Order Nos. PSC 93-1663-FOF-WS and PSC-93-1704-FOF-
20 WS.

21 Q. If OPC takes the position that it is not
22 challenging existing Commission policy on
23 acquisition adjustments and argues that
24 extraordinary circumstances exist in this case, do
25 you believe that sufficient allegations have been

1 made to support such a position?

2 A. No, I do not. In all the pleadings which OPC has
3 filed so far there has been only a vague assertion
4 about alleged "prior maintenance" practices of the
5 seller. Those allegations are insufficient to
6 sustain a claim that "extraordinary circumstances"
7 exist in this case. Furthermore, way back in the
8 1991 docket, OPC also unsuccessfully tried to make
9 "prior maintenance" a basis for granting
10 acquisition adjustments. The Commission did not
11 accept that argument. There was no basis for such
12 a claim then, and there is none now. In that
13 proceeding, the matter was addressed before this
14 Commission on May 24, 1993, in the supplemental
15 comments for the Florida Waterworks Association,
16 Transcrip. of proceedings in Docket No. 911082-WS,
17 Volume I, pages 9 - 10, May 24, 1993.

18 Q. Who has the burden of proof in a matter relating to
19 an acquisition adjustment?

20 A. It is my understanding that, as set forth in the
21 foregoing orders, particularly in Order No. 23376,
22 the burden of proof rests with the proponent of an
23 acquisition adjustment. Normally, for a positive
24 acquisition adjustment, that burden rests with the
25 acquiring utility which would normally be expected

1 to be the proponent of a positive acquisition
2 adjustment. For a negative acquisition adjustment,
3 that burden rests with the person or entity seeking
4 to have a negative acquisition adjustment imposed,
5 and in this case the burden of proof would fall on
6 OPC. A further discussion of the burden of proof
7 and prior Commission consideration of the
8 acquisition adjustment policy is contained in our
9 Motion filed December 6, 1996, at pages 7 through
10 11.

11 Q. In pleadings previously filed with this Commission
12 Wedgefield Utilities has taken the position that
13 the Commission may not make part of the Order a
14 final order and part of it a proposed agency action
15 (PAA) order. What is the basis for that position?

16 A. The purchaser of the utility in this case relied on
17 the established Commission policies, including the
18 policy on acquisition adjustments, in justifying
19 its decision to purchase the utility. The existing
20 Commission policy on acquisition adjustments had
21 been in effect since about 1983, according to
22 Commission orders, and the purchaser relied on that
23 policy in the instant case. Thus, the purchase of
24 this utility was a total decision as to all known
25 aspects of the utility, including the established

1 policy on acquisition adjustments. The decision
2 was not made on a piecemeal basis, and the
3 Commission's order regarding that application for
4 transfer should address all aspects of the transfer
5 with the same finality.

6 Q. Does this conclude your testimony?

7 A. Yes, it does. However, with the procedural
8 uncertainties currently existing in this
9 proceeding, Wedgefield Utilities would like to
10 reserve the right to file additional direct
11 testimony if the Commission is going to address
12 anything other than just the matter of an
13 acquisition adjustment. Wedgefield Utilities also
14 reserves all its other rights in regard to pending
15 motions and all other matters relating to this
16 proceeding.

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