

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

MARCH 6, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO) *[Signature]*
FROM: DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS) *[Signature]*
DIVISION OF WATER & WASTEWATER (WALKER) *[Signature]*

RE: DOCKET NO. 960235-WS - APPLICATION FOR TRANSFER OF
CERTIFICATES NOS. 404-W AND 341-S FROM ECON UTILITIES
CORPORATION TO WEDGEFIELD UTILITIES, INC.

DOCKET NO. 960283-WS - APPLICATION FOR AMENDMENT OF
CERTIFICATES NOS. 404-W AND 341-S BY WEDGEFIELD
UTILITIES, INC.

COUNTY: ORANGE

AGENDA: MARCH 18, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THE FULL COMMISSION IS REQUIRED FOR THIS
DECISION

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CASE BACKGROUND

On February 27, 1996, Wedgefield Utilities, Inc. (Wedgefield or utility) filed an application for the transfer of Certificates Nos. 404-W and 341-S from Econ Utilities Corporation (Econ) to Wedgefield. On March 5, 1996, Wedgefield filed an application for amendment of Certificates Nos. 404-W and 341-S to include additional territory in Orange County. In Order No. PSC-96-1241-FOF-WS, issued October 7, 1996, this Commission, by final agency action, approved the transfer and granted the amendment of the certificates to include the additional territory requested. By that same order, the Commission, by proposed agency action, established rate base for purposes of the transfer.

The Office of Public Counsel timely protested the order, and accordingly, by Order No. PSC-96-1533-PCO-WS, issued December 17, 1996, this matter was set for an April 29, 1997 hearing in Orange County. By Order No. PSC-97-0070-PCO-WS, issued January 22, 1997,

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The Office of Public Counsel timely protested the order, and accordingly, by Order No. PSC-95-1533-PCO-WS, issued December 17, 1996, this matter was set for an April 29, 1997 hearing in Orange County. By Order No. PSC-97-0070-PCO-WS, issued January 22, 1997, the matter was continued, and the hearing rescheduled for August 19, 1997.

On February 10, 1997, the utility filed a Motion to Assign Dockets to the Full Commission. Accordingly, this recommendation addresses this motion.

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DISCUSSION OF ISSUES

ISSUE 1: Should Wedgefield's Motion to Assign Dockets to the Full Commission be granted?

RECOMMENDATION: No. (CYRUS-WILLIAMS)

STAFF ANALYSIS: As stated in the case background, the hearing in this case is currently scheduled for August 19, 1997. A Commission panel of three members is currently assigned to this matter.

On February 10, 1997, the utility filed a Motion to Assign Dockets to the Full Commission, pursuant to Section 350.01(6), Florida Statutes. In its motion, the utility states that a panel is currently scheduled to hear the case, which involves the issue of the Commission's policy on negative acquisition adjustments. According to the utility, it would be inappropriate for less than the full Commission to decide the case because any decision other than to deny any acquisition adjustment would result in a change of current Commission policy on acquisition adjustments.

Section 350.01(6) provides:

A majority of the commissioners may determine that the full commission shall sit in any proceeding. The public counsel or a person regulated by the Public Service Commission and substantially affected by a proceeding may file a petition that the proceeding be assigned to the full commission. Within 15 days of receipt by the commission of any petition or application, the full commission shall dispose of such petition by majority vote and render a written decision thereon prior to assignment of less than the full commission to a proceeding. In disposing of such petition, the commission shall consider the overall general public interest and impact of the pending proceeding, including but not limited to the following criteria: the magnitude of a rate filing, including the number of customers affected and the total revenues requested; the services rendered to the affected public; the urgency of the requested action; the needs of the consuming public and the utility; value of service involved; the effect on consumer relations,

regulatory policies, conservation, economy, competition, public health, and safety of the area involved. If the petition is denied, the commission shall set forth the grounds for denial.

First, staff notes that Wedgefield's motion is untimely. Section 350.01(6), Florida Statutes, contemplates that a petition be filed early in a proceeding because it requires the Commission to "dispose of such petition by majority vote and render a written decision thereon **prior to assignment of less than the full commission to a proceeding.**" (emphasis added). Order No. PSC-96-1533-PCO-WS, assigning the panel, setting the matter for hearing, establishing procedure, and starting the statutory clock, was issued on December 17, 1996. Wedgefield's motion was not filed until almost two months later on February 10, 1997. Rule 25-22.0355(4)(b), Florida Administrative Code, provides that failure to file a timely request for a full commission hearing may be considered just cause for denial. Therefore, on this point alone, the Commission could deny the utility's request.

With regard to the merits of Wedgefield's request, Section 350.01(6), Florida Statutes, requires that the Commission consider the factors enumerated when determining a request for full Commission assignment to a hearing. Staff has considered the overall general public interest and impact of the pending proceeding, and believes the following to be of particular relevance to this case: the magnitude of the rate filing, the needs of the consuming public and the utility, the value of service involved, and the effect on consumer relations and regulatory policies.

First, this is not a rate case. Although staff recognizes that the rate base established by this proceeding will be used to calculate rates in a future rate proceeding, there is no rate change contemplated in this proceeding. Additionally, the needs of the public and the utility, the value of service involved and the effect on consumer relations are significant in this case to the extent they bear on whether extraordinary circumstances warranting an acquisition adjustment exist under these circumstances; however, staff does not believe that these issues rise to the level of warranting a full commission hearing. Finally, with regard to the effect on regulatory policies, the Commission panel's grant of an acquisition adjustment based on the specific facts of this case does not have to be a change in Commission policy, but could be a finding of extraordinary circumstances. Therefore, staff believes

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that the current panel could appropriately decide whether an acquisition adjustment is warranted in this case.

Further, the first available date for a full commission hearing is December 18, 1997. Staff does not believe that the reason stated by the utility sufficiently justifies a delay for at least a period of four months if the utility's motion is granted. Therefore, staff recommends that the Commission deny Wedgefield's Motion to Assign Dockets to the Full Commission.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending final disposition of this case. (CYRUS-WILLIAMS)

STAFF ANALYSIS: This docket should remain open pending final disposition of this case.