

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 960283-WS

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
ORDER NO. PSC-97-1178-FOF-WS
ISSUED: October 2, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
JOE GARCIA
DIANE K. KIESLING

ORDER DENYING VERIFIED PETITION
AND SUGGESTION OF DISQUALIFICATION

BY THE COMMISSION:

On August 1, 1997, Wedgfield Utilities, Inc. (Wedgfield, utility or petitioner) filed a Verified Petition and Suggestion of Disqualification (petition), together with a Motion for Continuance of Hearing. The petition seeks the disqualification of Commissioner J. Terry Deason from proceeding further in the aforementioned docketed matters, pursuant to Section 120.665, Florida Statutes, and Rule 25-21.004, Florida Administrative Code. Commissioner Deason is not the Prehearing Officer in this docket, but is one of the three Commission members assigned to the panel hearing this case.

By Order No. PSC-97-0949-PCO-WS, Order Declining to Withdraw from Proceeding, issued August 8, 1997, Commissioner Deason found that after reviewing Wedgfield's petition, the allegations concerning his dissent in Order No. PSC-96-1241-FOF-WS and prior employment with the Florida Office of Public Counsel (OPC) were not legally sufficient to demonstrate a bias, prejudice or interest in the instant proceeding. Commissioner Deason, therefore, declined to withdraw from the proceeding.

DOCUMENT NUMBER-DATE

10085 OCT-25

FPSC-RECORDS/REPORTING

Pursuant to Rule 25-21.004(1), Florida Administrative Code, "a Commissioner may be disqualified from hearing or deciding any matter where it can be shown that the Commissioner has a bias or a prejudice for or against any party to the proceeding or a financial interest in its outcome." Rule 25-21.004(3), Florida Administrative Code, provides, "where the commissioner declines to withdraw from the proceeding, a majority vote of a quorum of the full commission, absent the affected commissioner, shall decide the issue of disqualification."

In administrative agencies where Commissioners are selected for their expertise, or their ability to acquire expertise with experience, it would be most surprising if a Commissioner did not develop opinions on the major issues confronting his agency. In Re Area Rate Proceeding, 57 PUR3d 58 (FPC 1965). In addition to their adjudicatory duties, Commissioners are also policy makers, and must have the latitude to formulate opinions on general questions of fact, policy, or law. An opinion is not a prejudice or a prejudgment, at least when held by someone required and accustomed to hold all opinions subject to confirmation or rejection in light of the proof. Id. See also, Bay Bank & Trust Co. v. Lewis, 634 So.2d 672 (Fla. 1st DCA 1994); Federal Trade Comm'n v. Cement Inst., 333 U.S. 683, 702, 92 L.Ed. 1010, 1035, reh. den. 334 U.S. 839, 92 L.Ed. 1764 (1947) (mere formation and expression of opinion does not disqualify administrative officer from passing on merits of the case).

Upon consideration, we find that the allegations made in Wedgefield's petition concerning Commissioner Deason's dissent in Order No. PSC-96-1241-FOF-WS and prior employment with OPC are not the type which courts or administrative tribunals would recognize as a disqualifying bias, prejudice or interest. Pursuant to Section 120.665, Florida Statutes and Rule 25-21.004, Florida Administrative Code, the allegations are not sufficient to demonstrate that Commissioner Deason has a bias, prejudice, or interest in the instant proceeding. Therefore, we find that Commissioner Deason should not be disqualified.

On August 12, 1997, Wedgefield filed an Affidavit by Carl Wenz, Vice President of regulatory matters for Utilities Inc., of which Wedgefield is a wholly owned subsidiary. The affidavit essentially sets forth Wedgefield's reasons for not filing a petition for disqualification prior to August 1, 1997. Wedgefield's affidavit was not filed until eleven days after its petition for disqualification was filed, and four days after the

ORDER NO. PSC-97-1178-FOF-WS
DOCKETS NOS. 960283-WS, 960235-WS
PAGE 3


issuance of Commissioner Deason's Order Declining to Withdraw from Proceeding. Commissioner Deason had no opportunity to review the affidavit prior to issuing Order No. PSC-97-0949-PCO-WS.

Applicable case law indicates that the appropriate scope of review precludes the Commission from considering Wedgefield's affidavit in conjunction with Commissioner Deason's Order declining to withdraw from these proceedings. See Bay Bank & Trust Co. v. Lewis, supra. Therefore, we find that Wedgefield's affidavit is untimely and was not a proper subject for consideration by the Commission in evaluating whether Commissioner Deason's Order declining to withdraw is correct.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Wedgefield Utilities, Inc.'s Verified Petition and Suggestion of Disqualification is hereby denied.

By ORDER of the Florida Public Service Commission this 2nd day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JSB

ORDER NO. PSC-97-1178-FOF-WS
DOCKETS NOS. 960283-WS, 960235-WS
PAGE 4

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.