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April 28, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32301

Re: Docket No. 960235-WS, Application for Transfer of Certificate
Nos. 404-W and 341-S in Orange County from Econ Utilities
Corporation to Wedgefield Utilities, Inc.

Docket No. 960283-WS, Application for Amendment of Certificate
Nos. 404-W and 341-S in Orange County by Wedgefield Utilities,
Inc.

Dear Ms. Bayo:

Enclosed for filing on behalf of Wedgefield Utilities, Inc.
are the original and fifteen copies of the following documents:

- 1) Post-Hearing Statement of Issues and Positions and Brief of Wedgefield Utilities, Inc., including Attachment "A".
 - 2) Post-Hearing Proposed Findings of Fact and Conclusions of Law of Wedgefield Utilities, Inc.
 - 3) Motion by Wedgefield Utilities, Inc. to File Post-Hearing Documents in Excess of Those Permitted by Rule 25-22.056(1)(d), F.A.C.
- Pursuant to Rule 25-22.028(1), F.A.C., also enclosed is a diskette containing the foregoing documents in both ASCII format and WordPerfect 5.1 using DOS.
- Thank you for your assistance.
- Sincerely yours,
Ben E. Girtman
Ben E. Girtman

ACK 1
AFA 1
APP 1
CAF 3
CMU 1
CTR 1
EAG 1
LEG 2
LIN 3
QPC 1
RCH 1
SEC 1
WAS 1
OTH 1

Encl.
cc w/encl. Mr. Carl Wenz

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Post-Hearing Issues & Brief
DOCUMENT NUMBER-DATE

04732 APR 28 8

FPSC-RECORDS/REPORTING

Post-Hearing Prop. Findings & Conclusions
DOCUMENT NUMBER-DATE

04733 APR 28 8

FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE
04734 APR 28 8
FPSC-RECORDS/REPORTING

ORIGINAL

\$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

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

DOCKET NO. 960283-WS

Filed: April 28, 1998

POST-HEARING

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

of

WEDGEFIELD UTILITIES, INC.

Ben E. Girtman
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Tallahassee, FL 32301

Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

DOCUMENT NUMBER-DATE

04733 APR 28 8

FPSC-RECORDS/REPORTING

Utilities, Inc., submits the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Utilities, Inc. is a privately owned public utility engaged solely in the business of owning and operating water and wastewater systems and has no developer relationships. It owns and operates 63 subsidiaries in fifteen states, including twelve in Florida where it maintains experienced management and professional operators. It is adequately financed, has access to capital at reasonable costs, and is capable of reducing costs of operation due to economies of scale. [Tr. 157, Wenz Direct Testimony page 1, lines 17-18 and 24-25; Tr. 173-174, Wenz Additional Direct Testimony page 10, line 23 to page 11, line 15; Ex. 11, Application for Transfer, and its Exhibit A.]
2. Through Wedgefield Utilities, Inc., its wholly owned subsidiary, Utilities, Inc. has the ability and commitment to make the necessary improvements in this utility. It has the potential to reduce costs through the allocation of administrative expenses and through access to an established purchasing system, and it is familiar with, and has the ability to comply with, state and federal regulations. [Ex. 11, Application for Transfer, Part I, Para. E. and Part II, Para. A.; Tr. 173-174, Wenz Additional Direct Testimony page 10, line 23 to page 11, line 15.]
3. Econ Utilities Corporation was a small, developer-owned utility with financial pressures due to sustained losses that made it difficult to attract capital at a reasonable cost and to operate

and maintain the systems which put it in danger of not being able to expend the necessary capital to meet its obligations. The former owners either do not have, or are not willing to commit, the funds necessary to continue to operate and finance the utility. [Tr. 172, Wenz Additional Direct Testimony page 9, lines 12-19; Tr. 340-341, Seidman Rebuttal Testimony page 25, line 7 to page 26, line 2.]

4. In its negotiations to purchase Econ Utilities, Utilities, Inc. was fully aware of, and relied on, this Commission's acquisition adjustment policy stated in Commission Order Nos. 25729 and 23376. [Tr. 168-169, Wenz Additional Direct Testimony page 5, line 20 to page 6, line 20.]

5. The Orange County Utilities Division has no authority over Wedgefield or any other utility, whether privately or publicly owned, and its "standards" are applicable only to its own operations. [Composite Ex. 8, ltr. dtd 4/13/1995, Mr. Ispass to Mr. Blake, page 1.]

6. Econ operated (and now Wedgefield operates) under the jurisdiction of the Florida Department of Environmental Protection (DEP), the Orange County Environmental Protection Department (OCEPD), and the Florida Public Service Commission. It is inspected regularly by DEP and by OCEPD. These three agencies provide standards for Wedgefield and determine what is necessary for compliance, based on Federal and Florida laws and regulations. [Tr. 328, Seidman Rebuttal Testimony page 13, lines 13-22; Ex. 11, Application.]

CONCLUSIONS OF LAW

1. It is the policy of this Commission that, absent extraordinary circumstances, the purchase of a utility at a premium or discount shall not effect the rate base calculation and the proponent of an acquisition adjustment, either positive or negative, bears the burden of proof.
2. There is no extraordinary circumstances in this purchase, and no acquisition adjustment should be included in the rate base calculation.
3. For purposes of this transfer, the rate base is equal to the net book value of the assets, excluding ratemaking adjustments such as working capital or used and useful adjustments, and is \$1,462,487 for water and \$1,382,904 for wastewater.
4. Econ was (and now Wedgefield is) in compliance with the requirements of the Florida Department of Environmental Protection (DEP) and by the Orange County Environmental Protection Department (OCEPD).
5. Imposing a NAA would discourage the purchase of a system such as Econ, and that thwarts Commission policy and is a detrimental consequence to customers.
6. At the time of sale, the Econ assets were all functioning and not in violation of any state regulations. They were typical of developer-owned utilities, not in the best condition and not up to the standard which Utilities, Inc. would want to maintain, but not in extremely poor condition, either.
7. All the arguments set forth by Mr. Larkin have been made

before and have been rejected by this Commission in generic proceedings and in prior, case-specific orders of the Commission.

8. The utility will not be allowed to recover a return on assets which do not exist. Clearly, the assets do exist. They didn't disappear when ownership changed.

9. A NAA is considered at the time of transfer and requires that extraordinary circumstances be found for taking the extreme step of permanently reducing the net original cost as rate base. A used and useful adjustment is used in a rate case for temporarily removing from rate base certain assets which are not currently used and useful in providing utility service to the customers. The two regulatory concepts perform different functions at different times.

10. The contingent portion of the purchase price has no effect on rate base. In addition, the service area in the Reserve (formerly The Commons) is already under construction. The contract requires contingent payments to be made as soon as each new home is hooked up, so any "uncertainty" or "speculation" about whether payments will be made is unwarranted.

11. A major purpose of Commission policy on acquisition adjustments is to create an incentive for larger utilities to acquire small, troubled utilities. If a benefit to the purchaser results from the purchase price being lower than book value, it is at the expense of the seller, not at the expense of the customer. In fact, rate base is unchanged, and, because of this, there is no harm to the customer.

12. Commission Order No. 25729 listed several beneficial changes

due to a change in ownership, which the current Commission policy is intended to encourage. It also found that the customers of utilities acquired under its policy are not harmed, and indeed benefit from a better quality of service at reasonable cost.

13. To change the policy now not only would be a denial of due process but it also would defeat the purposes of the policy as originally developed and implemented by the Commission.

14. Rate base must recognize the original cost of assets at the time they were dedicated to public service.

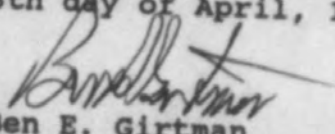
15. Based on a review of prior Commission orders, including the dissenting opinions, the following factors either are not relevant to the Wedgefield transfer, are not "extraordinary circumstances", or do not otherwise authorize, require or warrant a negative acquisition adjustment.

The system does not require replacing, the jurisdictional status is known, there is growth potential, and the system will benefit from certain economies under new ownership. The improvements that have to be made are in the public interest. The revenue requirement associated with the net original cost of the system would be no more than under the previous ownership. There is no requirement to prove hardship on the part of the seller. The tax treatment of the seller is irrelevant. A large differential between purchase price and rate base is not, of itself, an "extraordinary circumstance". The determination of rate base in this case is not an initial determination; rate base was determined by the Commission in 1984, and there was no lack of original cost

documentation. Even when a previous owner failed to maintain a system properly and the new owner had to make considerable expenditures to bring the system into compliance, these events are not "extraordinary circumstances". The customers do not have to "pay twice" because, regardless of ownership, the customers pay only for the legitimate cost of assets and expenses incurred and actually paid in their behalf. Customers will not pay for anything under the new ownership that they would not have been required to pay for under prior ownership. The transfer is customer-neutral, except for benefits the customers will receive due to new ownership. The sale did not result from a bankruptcy or foreclosure. The purchaser does not have uniform rates among its systems. To include both a negative acquisition adjustment and used and useful adjustments on the same plant would be double counting. Regardless of whether a purchasing utility includes a consideration of used and useful adjustments in its negotiations for acquisition or for setting the purchase price, a NAA is not warranted. In the public interest, the purchaser has already made improvements in the system and in its management. Only utility property, and no lots or other assets, were bought or sold in the transaction between seller and purchaser. Seller had not filed to abandon the utility system. The seller has not been purchasing water or any other utility service from any other utility, and it has not been earning on unused plant components. Any ratemaking adjustments would have to be considered in the context of a rate case. Not including a negative acquisition adjustment does no harm to

customers. Rate base and monthly rates will not change as a result of the transfer. The sale of the utility does not involved a three-party or a nontaxable exchange, there are no family trusts or other trusts involved in the sale, and even without a negative acquisition adjustment, the seller will not recover, much less double recover, its investment. There has been no agreement or settlement of this transfer docket for any transfer rate base less than full net book value, and Wedgefield has not requested anything that would cause a change to rate base or rates as a result of the transfer.

RESPECTFULLY SUBMITTED, this 28th day of April, 1998.


Ben E. Girtman
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Attorney for Utilities, Inc.
and Wedgefield Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent to Charles Beck, Esq., Office of Public Counsel, 111 W. Madison St., Tallahassee, FL 32399-1400; Mr. John Forrer, Econ Utilities Corporation, 1714 Hoban Rd. NW, Washington, D.C. 20007; and to Jennifer Brubaker, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by U.S. Mail (or by hand delivery * or facsimile #) this 28th day of April, 1998.


Ben E. Girtman