In re: Application for transfer of Certificates 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 Certificates Nos. 404-W and 341-S in Orange County by Wedgefield Utilities, Inc.	DOCKET NO. 960283-WS ORDER NO. PSC-98-1092-FOF-WS ISSUED: August 12, 1998

The following commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA

APPEARANCES:

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On behalf of Wedgefield Utilities, Inc.

Jack Shreve, Public Counsel, and Charles J. Beck, Deputy Public Counsel, Office of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400.
On behalf of the Citizens of the State of Florida.

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On behalf of the Commission Staff.

FINAL ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER, DECLINING TO INCLUDE A NEGATIVE ACQUISITION ADJUSTMENT IN THE CALCULATION OF RATE BASE AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On February 27, 1996, Wedgefield Utilities, Inc. (Wedgefield or utility) filed an application to transfer Certificates Nos. 404-

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ATTEST [signature]
Chief, Bureau of Records

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W and 341-S from Econ Utilities Corporation (Econ) to Wedgefield. Wedgefield is a wholly-owned subsidiary of Utilities, Inc. Utilities, Inc. focuses on ownership and operation of small systems and provides centralized management, accounting and financial assistance to small utilities that were commonly built by development companies. 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 (OPC) timely protested the Order. Accordingly, by Order No. PSC-96-1533-PCO-WS, issued December 17, 1996, this matter was scheduled 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. By Order No. PSC-97-0953-PCO-WS, issued August 11, 1997, the hearing on the matter was again continued, and pursuant to Order No. PSC-97-1041-PCO-WS, issued September 2, 1997, the hearing on this matter was rescheduled for March 19, 1998. The Prehearing Conference was held on August 4, 1997, in Tallahassee, Florida. Prehearing Order No. PSC-97-0952-PHO-WS, was issued August 11, 1997.

On February 17, 1998, the utility filed a motion to file supplemental prefiled testimony on behalf of utility witness Seidman. Order No. PSC-98-0392-PCO-WS, issued March 16, 1998, denied Wedgefield's motion, stating that the information contained in the proposed supplemental testimony would be appropriately discussed in the utility's post-hearing brief.

On March 19, 1998, the Commission held the technical hearing in Wedgefield, Florida. The hearing was continued and concluded on March 26, 1998, in Tallahassee, Florida. At the hearing, Wedgefield objected to the admission of Exhibit 4 into the record. The exhibit consisted of several letters written by local officials on behalf of their constituents. Wedgefield's objection was overruled and the letters were admitted. Official notice was taken of certain prior Commission Orders, on behalf of both Wedgefield and staff. Exhibit 8, consisting of letters related to a study performed by Orange County, was stipulated to by the parties and admitted into the record.

Wedgefield made an oral motion to strike certain portions from the prefiled testimony of OPC witness Larkin, arguing that the testimony called for the witness to reach conclusions beyond his expertise. Upon hearing the arguments of the parties and comments from staff, the Commission denied Wedgefield's motion, stating that the utility's objection appeared to go more to the weight that the Commission would give to the testimony as opposed to its admissibility. Wedgefield also made an oral motion for reconsideration of Order No. PSC-98-0392-PCO-WS, which denied the utility's request to file supplemental prefiled testimony. After hearing the arguments of parties and staff's comments, the Commission found that the utility had not demonstrated any mistake of fact or law and denied Wedgefield's motion for reconsideration.

Custo 'r Testimony

Customer testimony was taken at the beginning of the technical hearing on March 19. One customer testified that customers generally support transferring the utility to Wedgefield subject to these conditions: rate base should be equal to the purchase price, and a new development, referred to as either the Commons or the Reserve, should not increase rates. A second customer testified that the utility's rates exceed comparative rates for several local utilities. The second customer's rate study confirmed this rate disparity. A third customer also testified that her bills were exceedingly large. A fourth testified that any increase in rates should be shifted to the developer of the Reserve. A fifth customer presented several letters from public officials who opposed increased rates on behalf of their constituents and spoke in favor of the purchase price relative to retention of the seller's rate base value.

A fifth customer testified that water service to her home was interrupted from December 20 through December 22, 1997. She testified that she was told by utility personnel that the utility's pipes were brittle and shattering and should be fully replaced. In response, Utility Witness Seidman testified that the reported break occurred at a location where 10-inch and 6-inch mains intersect and several valves are found close to or under the pavement. He testified that shifting and settling may occur over time because of traffic patterns. He reported that the pipes did not break, but instead, separated from the valves. A repair crew began work when the problem was discovered and, over a 48-hour period, completed the reconnection work. According to the utility, about 17 customers experienced a water outage and customers whose water pressure fell below 20 pounds per square inch were issued a boil water notice.

A sixth customer testified that customers asked Orange County to examine this system for possible acquisition. According to this customer, the County found that acquiring this system was not economically feasible for various reasons. The customer reported that the Department of Environmental Protection (DEP) informed the customers that the utility was meeting minimum standards with "very, very hard water." He also testified that although he recognized that this proceeding was not a rate case, his principle concern was:

> [I]f, in fact, the Commission allows the Company to depreciate at a rate of 2.8 million and then use that as a basis of cost, there's no question in our minds that the Utility Company will then come forward and say that they are not making any money, and, therefore, they will initiate a rate case. That is our major, major concern.

The customer asked the Commission to deny Wedgefield's requested rate base amount since the "the low purchase price . . . truly established the worth of the facility." He explained that he did not oppose the proposed transfer to Wedgefield but opposed the proposition that the acquiring company should stand in the seller's shoes with respect to rate base.

Pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, each party is required to file a post-hearing statement including a summary of each position. On April 28, 1998, Wedgefield and OPC each filed their Statement of Issues and Positions and Post-Hearing Briefs. On April 28, 1998, counsel for Wedgefield also filed proposed findings of fact and conclusions of law. We include our ruling on each of Wedgefield's proposed findings of fact and conclusions of law in Attachment A to this Order, incorporated hereto by reference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND POLICY

Having heard the evidence presented at the hearing in this proceeding and having reviewed the recommendation of the Commission staff, as well as the briefs of the parties, we now enter our findings and conclusions.

STIPULATIONS

In Prehearing Order No. PSC-97-0952-PHO-WS, all parties and staff agreed the following stipulations were reasonable. However, these proposed stipulations were not ruled upon at hearing. We have reviewed the stipulations, which are set forth below, and find

them to be reasonable. Accordingly, the stipulations are hereby approved.

1. Wedgefield Utilities, Inc., paid cash of $545,000 for the utility's assets. In addition, it agreed to make contingent payments equal to every other service availability charge in the area known as The Commons if and when it is developed.

2. The applicant utility has not requested rate base inclusion of any acquisition adjustment.

Additionally, all parties and staff agreed to the exhibit entitled "Acquisition Feasibility Analysis of Econ Utilities Corporation," dated June 1995 and prepared under the control and supervision of Alan B. Ispass, Director, Orange County Utilities, being entered into the record without objection. Because the exhibit was offered as a stipulated exhibit and moved into the record without objection at the hearing, it is unnecessary for us to rule on this stipulation.

OBJECTION TO LATE-FILED EXHIBIT NO. 18

During the hearing, staff requested that the utility provide as a late-filed exhibit "a per customer operating and maintenance expense analysis for Econ Utilities Corporation for the years 1992 through 1997." This exhibit was identified as Late-Filed Exhibit No. 18. By motion filed on April 14, 1998, OPC objected to this exhibit. In its objection, OPC argued that had the exhibit been offered at the hearing, OPC would have conducted extensive cross-examination concerning the contents of the exhibit.

Upon review of the exhibit, staff determined that the exhibit was unnecessary and, therefore, decided to withdraw its request for the exhibit. Based on this withdrawal, it is unnecessary for us to address the merits of either OPC's or Wedgefield's arguments contained in their respective pleadings. Accordingly, we find that OPC's objection and the parties' subsequent pleadings are moot.

ACQUISITION ADJUSTMENT

As stated previously, OPC protested Order No. PSC-96-1241-FOF-WS, in which the Commission, by proposed agency action, found it appropriate not to include a negative acquisition adjustment in the calculation of rate base. Our findings with respect to the acquisition adjustment issue, and a discussion of the pertinent elements, are set forth below.

Burden of Proof

In its brief, the utility argues that Rule 25-30.037(2), Florida Administrative Code, sets forth what a utility must file with the Commission when it seeks authority for a transfer of its facilities. The rule requires, in pertinent part, that an application for transfer must include a statement setting out the reasons for the inclusion of an acquisition adjustment, if one is requested. Wedgefield argues that, therefore, if and only if a utility is seeking an acquisition adjustment, it (the utility) must justify the adjustment; the rule does not require the utility applicant to allege or prove why an acquisition adjustment requested by someone else should not be granted by the Commission. The utility asserts that there is no rule, statute or order which places the burden of proof on anyone other than the proponent of the acquisition adjustment. Wedgefield argues that OPC, as the only entity requesting an acquisition adjustment in this case, bears the exclusive burden to show why a negative acquisition adjustment should be granted.

Although OPC raised the issue of burden of proof in this proceeding, it did not address the issue substantively in its brief or in the overview to its brief. OPC merely recited its position on the issue, that the utility has the burden of justifying why its actual purchase price should not be used to establish its rate base.

After an extensive review of prior Commission Orders, it appears that the issue of burden of proof regarding the rate base inclusion of an acquisition adjustment, either positive or negative, is one of first impression before the Commission. Neither the utility nor OPC cited to any precedent directly on point.

Because the inclusion of an acquisition adjustment, either positive or negative, will ultimately have an impact on rates, we find it appropriate to analogize this issue to the issue of who bears the burden of proof in a rate proceeding. In Florida Power Corporation v. Cresse, 413 So.2d 1187, 1191 (Fla. 1982), the Florida Supreme Court stated that the burden of proof in a Commission proceeding is always on a utility seeking a rate change. See also Order No. PSC-96-0499-FOF-WS, issued April 9, 1996, in Docket No. 951258-WS. In previous cases, we have held that in any rate case, the utility has the burden of proof. Order No. PSC-92-0266-FOF-SU, issued April 28, 1992, in Docket No. 910477-SU. See also Order No. PSC-95-1376-FOF-WS, issued November 6, 1995, in Docket No. 940847-WS; Order No. PSC-93-1288-FOF-SU, issued September 7, 1993, in Docket No. 920808-SU; Order No. PSC-93-1070-

WS, issued July 23, 1993, in Docket No. 920655-WS; Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS; Order No. PSC-92-0594-FOF-SU, issued July 1, 1992, in Docket No. 910756-SU.

In Order No. PSC-93-1023-FOF-WS, issued July 12, 1993, in Docket No. 911188-WS, we found that the utility at all times bears the burden of proof in a rate proceeding. Although the underlying case involved the granting of a certificate of public convenience and necessity, the Florida Supreme Court in Stewart Bonded Warehouse v. Bevis noted that while the burden of going forward with the evidence as to an issue may shift in any particular case, the burden of proof remains with the applicant, and it is the applicant who must carry the burden of proof. 294 So. 2d 315, 317-18 (Fla. 1974).

We note the issuance of a recent opinion from the Florida First District Court of Appeal, Southern States Utilities n/k/a Florida Water Services Corporation v. Florida Public Service Commission, et al., Case No. 96-4227, Commission Docket No. 950495-WS, issued July 10, 1998. In the facts underlying the case, Florida Water Services Corporation (FWSC) acquired the water and wastewater utility serving Lehigh Acres for less than what it cost the original owner to build the used and useful infrastructure. See the court's opinion at page 17. In the order on appeal, we had declined a request from OPC to include a negative acquisition adjustment in the rate base to reflect the price FWSC paid. Id. In affirming this portion of the Commission's Order, the court concluded that OPC had made no showing of exceptional or extraordinary circumstances, and that we therefore lawfully exercised our discretion in declining to make the requested adjustment. Id. The First District Court of Appeal opinion is silent as to the issue of burden of proof with respect to the acquisition adjustment; however, we do not believe that the opinion is consistent with our position on this issue. Similar to the opinion referenced above, we believe that OPC was unsuccessful in demonstrating the existence of extraordinary circumstances in the instant case. Because OPC did not carry its burden of persuasion and there was no subsequent shift in the burden of proof, it was not required in either case that the utility rebut OPC's allegations and carry the ultimate burden of proof.

As stated previously, Wedgefield contends that Rule 25-30.037(2), Florida Administrative Code, is controlling on this issue and does not require the utility applicant to allege or prove why an acquisition adjustment requested by someone else should not be granted by the Commission. However, Rule 25-30.037(2), Florida Administrative Code, sets forth the items which must be filed in a

transfer application and does not address, either explicitly or implicitly, any legal standards on burden of proof. Although Wedgefield contends that there is a "long history of the burden of proof always being on the proponent of an acquisition adjustment," it fails to cite to any case law or previous Commission Orders which are on point as to the issue.

We find that in the instant case, as in rate proceedings, the ultimate burden of proof rests upon the utility. As stated previously, the utility always has the ultimate burden of proof with regard to its rates. Because the imposition of an acquisition adjustment will eventually affect the utility's rates, we find that the utility must carry the ultimate burden of proof as to why an acquisition adjustment should or should not be included in the rate base determination. As discussed in greater detail below, we find that a showing of extraordinary circumstances must be made to warrant a rate base inclusion of an acquisition adjustment. Once the utility makes an initial showing that there are no extraordinary circumstances, the burden of persuasion shifts to the opposing party to demonstrate that extraordinary circumstances are present. If the opposing party meets the burden of persuasion, the ultimate burden of rebutting the opposing party's allegations rests upon the utility.

Condition Of Assets

In this case, the condition of the acquired assets is of special concern because it was presented as a rationale for rate base inclusion of an acquisition adjustment. OPC and some customers contend that the assets were so poorly maintained that the purchase price, not the seller's net book value, is the proper rate base amount.

In its brief, Wedgefield argues that erroneous allegations were made with respect to the condition of Econ's facilities. Wedgefield contends that statements from the Orange County Public Utilities Division (OCPUD) report were taken out of context and misapplied to a "stand-alone, privately owned system which operates under different regulatory requirements and a substantially different operating situation." Wedgefield alleges that Mr. Larkin, who is not a professional engineer and never visited the utility, is unable to evaluate this system. Wedgefield further contends that Mr. Larkin's characterization of the condition of the utility is "second-hand, hearsay, and not convincing," and that such expressions of opinion are neither authoritative nor reliable.

In its brief, OPC argues that the utility's assets were in poor condition because Econ did not have a preventative maintenance

program. OPC contends that this observation is meaningful since it is repeated throughout the OCPUD report. According to OPC, the utility's repair expenses will increase as its facilities age, particularly those associated with maintaining asbestos cement lines. Thus, OPC contends that historical costs are not indicative of future costs.

Utility Witness Wenz testified that this utility was in compliance with regulatory requirements and not in any immediate danger of falling out of compliance. Mr. Wenz testified that, based on his personal observations and discussions with other local company personnel:

> this appeared to be just a typical developer-owned system, whose attention was diverted to developing, and he didn't maintain this like a professional utility company would. There was some maintenance things that had to be taken care of . . . Just your typical troubled developer-owned utility company.

During cross-examination, Mr. Wenz testified that Econ's facilities were not up to his company's standards in some respects. He explained that painting was needed as an aesthetic measure and to prevent corrosion, some lift stations needed to be reworked, and some pumps needed to be replaced. He agreed that the condition of the assets played some role in Wedgefield's purchase negotiations. He acknowledged that infiltration, the entry of groundwater into a wastewater system, was probably a problem, but he was uncertain whether the problem was excessive or cost efficient to replace. However, he explained that looking for infiltration was a routine part of maintaining a sewer system.

During the initial two years that Wedgefield has operated this system, approximately $125,000 has been spent for plant facilities. This includes $29,000 to refit a master-lift station, $8,000-$9,000 to repaint utility tanks and equipment, $25,000 to replace blowers at the wastewater plant, $8,000 to replace a driveway at the wastewater plant, and $15,000 for engineering work for expansion of the wastewater plant. Also, about $38,000 was spent to replace lines improperly installed by the developer, which was offset by a $30,000 developer payment. By comparison, the gross plant value of the acquired plant facilities was $6,712,055 at December 31, 1995. Thus, we believe that Wedgefield's recent additions to plant are neither abnormal nor indicative of major problems.

OPC Witness Larkin testified that Econ was a functioning utility that was not in "dire need" of being taken over, although it was not properly maintained. Mr. Larkin never visited the

utility to personally evaluate its plant facilities. Instead, he used documents produced by others to support his position. One such document, titled "Acquisition Feasibility Analysis of Econ Utilities Corporation," was prepared by the OCPUD in January of 1995. As noted previously, the customers asked Orange County to evaluate this system for possible acquisition. Mr. Larkin testified that a "prevalent comment" in that report was that maintenance and repairs were only performed on an emergency basis since Econ did not have a preventative maintenance program.

In its report, the OCPUD stated that rehabilitation and improvement costs of $4,642,367 were anticipated for the water and wastewater systems. Estimated improvements to the water treatment facility totaled $489,555, while rehabilitation of the distribution system totaled $577,612. Improvements to the water plant included installing a new well and pumping equipment, as well as softening and scrubbing equipment. The softener was replaced sometime in 1996. The major rehabilitation cost for the distribution system involved replacing asbestos-cement pipes that were installed between 1962 and 1970. Projected improvements to the wastewater collection plant totaled $839,960, while rehabilitation of the collection system totaled $2,734,755. Improvements for the wastewater treatment plant mostly involved projected expansion costs. But for the collection system, OCPUD concluded that all of the asbestos-cement pipes would need to be replaced, that lines should be moved from the rear to the front of houses, and that substantial repaving costs would be incurred.

Interconnection of this utility with OCPUD's utility system was deemed impractical for various reasons. A significant concern was the cost of installing water and wastewater transmission lines to interconnect Econ's facilities with OCPUD, which was estimated to be $6,096,035 for the water system and $5,084,288 for the wastewater system. OCPUD's water and wastewater facilities are about 10 miles from Wedgefield.

Further, Mr. Larkin noted that Econ's own engineer commented that asbestos-cement pipe would eventually need to be replaced. We note, however, that the quoted portion of that draft report does not identify when replacement would be needed. Mr. Larkin also testified that Econ failed to adequately maintain its facilities: "(t)he obvious reason for the low purchase price in relationship to the net book value is that many of the assets will have to be replaced or repaired."

Utility Witness Seidman testified that Mr. Larkin's characterization of this utility was "second-hand opinion." Mr. Seidman testified that he inspected the utility's facilities prior

to writing his testimony and just prior to the hearing in Orlando. He testified that Mr. Larkin's prefiled testimony led him to believe the system was in "shambles." Instead, he testified that the system was in relatively average condition for a small system, that everything was "functioning" and there were no violations, but there was maintenance which should be done. He testified that while the OCPUD report indicated severe corrosion was present at Econ's water and wastewater plants, the visible corrosion has been corrected and other corrosion problems can and will be corrected through normal maintenance.

Mr. Seidman testified that this system operates under the environmental jurisdiction of DEP and the Orange County Environmental Protection Department, which regularly inspect the utility and establish compliance standards. He further testified that the system is not subject to OCPUD jurisdiction or standards, and that OCPUD has imposed standards on its own systems that may not be required or economically feasible for an independent utility in order for it to provide safe, efficient and sufficient service.

Mr. Seidman testified that the OCPUD report concluded that Econ's water supply, treatment, and distribution systems were basically in good condition, but that there were problems with the wastewater system. He said while the report did not find that the plant was malfunctioning, it indicated that there were significant inflow and infiltration problems. However, he explained:

> That in itself is not some type of -- something that puts a system in poor condition. We know that the pipes in this system are old. There's indication that a portion of them are asbestos cement pipe, which represents about 20% of the pipe that's in the ground now. That was the standard at the time they were put in. There's not much you can do with them except take them out. That is not feasible for a system this size.

Mr. Seidman testified that OCPUD's report suggests that $3.3 million of its estimated $4.6 million capital improvement cost is needed to relocate mains from rear lot to front lot lines, to replace asbestos lines, or to replace "old" cast iron pipes. He testified that: "(t)here is no requirement on a privately owned utility to engage in such a massive replacement program, nor is Orange County or the DEP requiring the utility to do so." Instead, he said that OCPUD evaluated this system under the assumption that it would be integrated into the county's water and wastewater system. He explained:

> The analysis then details some $4.6 million in "costs" allegedly needed to bring the system up to County "standards." There is an inference that this amount of money must be spent because the utility system is "substandard." That is an incorrect inference and it is misleading.

Mr. Seidman testified that statements from the OCPUD report that maintenance was only performed on an "emergency basis" were conjectures not otherwise explained or substantiated in that report. He testified that maintenance may be performed on an "as-needed" basis without every instance being an emergency. As Econ incurred cumulative net operating losses of $2 million and net income losses of $4 million from 1988 to 1995, Mr. Seidman said he would not b surprised that a preventative maintenance program was not in place. In addition, Mr. Wenz testified that the prior owner was not interested in operating a utility or committing funds to it. However, Mr. Seidman testified that Wedgefield can actively pursue a capital improvement program and finance capital additions, which is the intended benefit of the Commission's acquisition adjustment policy.

Based upon the evidence in the record, we find that the acquired assets were in fair condition. As stated previously, Mr. Wenz testified that the facilities are in compliance with regulatory requirements and are not operating in violation of any DEP standards. Any significant problems which may exist appear to relate to the use of asbestos-cement pipes for distribution and collection lines, which was not an uncommon practice when those lines were installed. While replacement of these lines will eventually be necessary, immediate replacement is not economically feasible. We believe the record shows that the acquired assets were relatively typical for a developer-owned system. For this reason, we find that the utility's facilities were in fair condition, were typical of other utilities, and were not extraordinary in nature.

Econ As A "Troubled" Utility

Generally, absent extraordinary circumstances, it has been Commission policy that a subsequent purchase of a utility system at a premium or a discount shall not affect the rate base balance. As stated in Order No. 23376, issued August 21, 1990, the purpose of this policy is to create an incentive for larger utilities to acquire small, "troubled" systems.

In its brief, Wedgefield argues that Econ was a financially troubled utility, having sustained cumulative net losses in excess

of $4 million over the most recent eight-year period and that it lacked either the means or commitment to invest in future capital needs or future maintenance. Wedgefield argues that, unlike Econ, it has the financial ability and capacity to commit funds to operation of this utility. Wedgefield further contends that if OPC's witness admitted that this system was troubled, that would support the applicability of the Commission's policy of excluding the acquisition adjustment.

In its brief, OPC argued in its brief that Econ's assets were poorly maintained. OPC further argues that while Econ was able to meet environmental standards, it did not have a formal preventative maintenance program, only doing what was necessary to facilitate housing development. In its feasibility study, OCPUD reported that repairs were performed on an emergency basis and that there was no regular preventative maintenance program. Nonetheless, OPC argues that Econ was not a "troubled" utility because it was able to meet regulatory standards by providing maintenance on an emergency basis.

With regard to OPC witness Larkin's apparent inability to conclude that Econ was a "troubled utility," Mr. Seidman testified that:

> [Mr. Larkin] used a substantial part of his testimony to imply that this utility was like a car about to lose its wheels, that the expense to just keep it running would be enormous, and that the previous owner did practically nothing to maintain it. Then, when it comes to determining whether the utility is troubled, he turns to the PSC staff Engineers' report which says, well it's not so bad, it needs some improvements, but there is no problem with the water, and the wastewater plant is fine.

Mr. Seidman stated that Mr. Larkin balked at concluding that the utility was "troubled" because he "knows the purpose of the Commission's acquisition policy is to give large utilities an incentive to purchase small, 'troubled' utilities."

Mr. Wenz testified that the previous owner confided that: "although he wanted to continue to develop property, he was no longer interested in operating a utility or committing funds to it." In contrast, Mr. Wenz testified that Wedgefield's parent company only operates utility systems. With this affiliation, Wedgefield will be able to attract capital at a reasonable cost and benefit from economies of scale through sharing common vendor and management resources. He testified that Utilities, Inc. is probably the largest active company acquiring troubled water and

wastewater systems in Florida and that it relied upon this Commission's acquisition adjustment policy to bargain for and purchase these systems.

We believe these conditions are characteristic of a financially "troubled" utility. The record indicates that Econ was not in a position to increase its maintenance costs, to actively pursue a capital improvement program, or to finance capital additions. Conversely, Wedgefield appears able to assume these obligations. Based on the foregoing, we believe the record indicates that although Econ was a functioning utility, it was economically "troubled." Accordingly, we find that Econ was a "troubled" system.

Requirement to Show Extraordinary Circumstances

On November 17, 1989, OPC asked the Commission to initiate rulemaking or, alternatively, to investigate its policy regarding acquisition adjustments. Since at least 1983, we have consistently held that the rate base calculation should not include an acquisition adjustment absent evidence of extraordinary circumstances. We reviewed this issue in Docket No. 891309-WS. By Order No. 22361, issued January 2, 1990, we rejected OPC's petition to initiate rulemaking but granted its request to investigate this topic. Thereafter, we invited interested parties to submit written comments and conducted workshops to discuss this subject. By Order No. 23376, issued August 21, 1990, as a proposed agency action, we concluded that it would not be appropriate to amend our policy regarding acquisition adjustments. In that order, we stated that not only might OPC's proposed change not benefit the customers of troubled utilities, it might actually be detrimental, by removing any incentive for larger utility companies to acquire distressed systems. On September 11, 1990, OPC filed a protest to Order No. 23376.

Thereafter, pursuant to Section 120.57(2), Florida Statutes, we invited all interested parties to appear and be heard during an oral presentation on July 29, 1991. During this hearing, OPC argued that by failing to impose a negative acquisition adjustment on the buyer, the Commission was creating a "mythical" investment that exceeded the buyer's actual commitment of capital. OPC further argued that the Commission did not have the statutory authority to give the buyer the rate base of the seller. Conversely, utility companies argued that the Commission has broad authority to interpret its statutory authority in a manner which best serves the long-term interests of the ratepayers.

Reviewing our acquisition adjustment policy in Docket No. 891309-WS, we heard contrasting positions regarding use of the purchase price or the seller's rate base for subsequent rate case proceedings. In Order No. 25729, issued on February 17, 1992, we concluded the investigation and confirmed our acquisition adjustment policy. In that Order, we stated:

> We still believe that our current policy provides a much needed incentive for acquisitions. The buyer earns a return on not just the purchase price but the entire rate base of the acquired utility. The buyer also receives the benefit of depreciation on the full rate base. Without these benefits, large utilities would have no incentive to look for and acquire small, troubled systems. The customers of the acquired utility are not harmed by this policy because, generally, upon acquisition, rate base has not changed, so rates have not changed. Indeed, we think the customers receive benefits which amount to a better quality of service at a reasonable rate. With new ownership, there are beneficial changes: the elimination of financial pressure on the utility due to its inability to obtain capital, the ability to attract capital, a reduction in the high cost of debt due to lower risk, the elimination of substandard operating conditions, the ability to make necessary improvements, the ability to comply with the Department of Environmental Regulation and the Environmental Protection Agency requirements, reduced costs due to economies of scale and the ability to buy in bulk, the introduction of more professional and experienced management, and the elimination of general disinterest in utility operations in the case of developer owned systems.

In its brief, the utility argues that the Commission's policy regarding acquisition adjustments, which has been in effect at least since 1983, is that absent extraordinary circumstances, the purchase of a utility system at a premium or discount, shall not affect rate base. Wedgefield further contends that all of the arguments set forth by Witness Larkin have been heard and rejected by the Commission in Docket No. 891309-WS.

In its brief, OPC argues that because the Commission does not have a rule regarding acquisition adjustments, it cannot have in place a policy which requires a showing of extraordinary circumstances in order to warrant the recognition of an acquisition adjustment. If the Commission had such a policy, Section

120.54(1)(a), Florida Statutes, would require the Commission to have a rule reflecting that policy.

Section 120.54(1)(a), Florida Statutes, provides that rulemaking is not a matter of agency discretion, and that each agency statement defined as a rule by Section 120.52, Florida Statutes, shall be adopted by the rulemaking procedure as soon as feasible and practicable. Rulemaking shall be presumed feasible unless the agency proves that (1) the agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking, or (2) related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking. Section 120.54(1)(a)1.a.-h., Florida Statutes.

In its brief, OPC contends that, unless the Commission is violating the Administrative Procedure Act, either the Commission has not acquired the knowledge and experience reasonably necessary to address a statement about acquisition adjustments by rulemaking, or the Commission has not sufficiently resolved related matters to enable the Commission to address a statement by rulemaking.

OPC contends in its brief that, although there is no requirement for a showing of extraordinary circumstances, such circumstances have been shown by the combination of a lack of maintenance of Econ's facilities by the prior owner and the magnitude of difference between the net book value and the purchase price. In summary, OPC argues in the "overview" portion of its brief that

> the facts and circumstances in this case meet the "extraordinary circumstances" test described in Commission orders dealing with the purchase of other water and wastewater utilities. This unadopted rule policy, however, is not binding on this proceeding. All of the facts and circumstances in this case, along with the inevitable consequences of the Commission's actions, must take precedence over unadopted rule policy if the Commission decides that the "extraordinary circumstances" test has not been met in this case.

Although the Commission has no rule regarding the rate base inclusion of an acquisition adjustment, previous Commission orders have consistently stated that, absent evidence of extraordinary circumstances, the rate base calculation should not include an acquisition adjustment. See Order No. 20707, issued February 6, 1989, in Docket No. 880907-WU; Order No. 23970, issued January 1, 1991, in Docket No. 900408-WS; Order No. 25584, issued January 8,

1992, in Docket No. 910672-WS; Order No. PSC-95-0268-FOF-WS, issued February 28, 1995, in Docket No. 940091-WS; Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS.

As discussed previously, a recent opinion from the Florida First District Court of Appeal, Southern States Utilities n/k/a Florida Water Services Corporation v. Florida Public Service Commission, et al., Case No. 96-4227, PSC Docket No. 950495-WS, issued July 10, 1998, is instructive. In the Order on appeal, the Commission had declined a request from the Office of Public Counsel to make a downward adjustment in rate base, ruling that:

> This Commission has acknowledged that absent extraordinary circumstances, the purchase of a utility system at a premium or discount should not affect rate base.

See the court's opinion at page 17, citing Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS. The First District Court of Appeal concluded that OPC had made no showing of exceptional or extraordinary circumstances, and that the Commission therefore lawfully exercised its discretion in declining to make the requested adjustment. Id.

We agree with Wedgefield's contention that the current Commission practice regarding acquisition adjustments is that. absent extraordinary circumstances, the purchase of a utility system at a premium or discount, shall not affect rate base. Although what constitutes "extraordinary circumstances" must be determined on a case-by-case basis, extraordinary circumstances must be shown to warrant rate base inclusion of an acquisition adjustment. This is consistent with the investigation conducted as to our acquisition adjustment policy in Docket No. 891309-WS, and subsequent Commission Orders in which acquisition adjustments are at issue.

At the August 4, 1997 Prehearing Conference, an issue was raised by OPC regarding the effect of prior orders to the instant proceeding. After hearing from the utility, OPC and staff regarding the relevance of the proposed issue, the Prehearing Officer struck the issue from the Prehearing Order, noting that the issue was essentially phrased as a rule challenge that would be more appropriately brought before the Division of Administrative Hearings in a proceeding pursuant to a Section 120.54, Florida Statutes.

The matters raised in OPC's brief regarding whether the Commission's policy on acquisition adjustments constitutes an

umpromulgated rule are substantially similar to those raised with regard to the proposed issue which was stricken during the Prehearing Conference. Although the matter was not at issue in this case, we note that the acquisition adjustment issue is part of an on-going Commission staff project on viability and capacity development in the water and wastewater industry. We are not prepared to go to rulemaking until the overall project reaches some conclusion. We further note that the issue has been considered in past rulemaking cases, in which we were unable to reach a consensus on the issue of extraordinary circumstances.

Existence Of Extraordinary Circumstances

Wedgefield contends that rate base inclusion of an acquisition adjustment is not appropriate since there are no extraordinary circumstances this case. It argues that OPC misunderstands Order No. PSC-96-1241-FOF-WS, if OPC believes this issue only depends upon used and useful adjustments. Instead, Wedgefield argues that a used and useful adjustment "temporarily" removes the disputed balance in a rate proceeding, whereas rate-base inclusion of the acquisition adjustment "permanently" reduces the original cost balance.

In its brief, OPC argues that the disparity between the purchase price and the seller's net book value, together with the absence of preventative maintenance, are just reasons for rate base inclusion of the negative acquisition adjustment. OPC Witness Larkin testified that extraordinary circumstances are present in this case. First, he testified that Wedgefield's cash payment for Econ's assets was $545,000, whereas Econ's rate base at December 31, 1995, was $2,845,391. Additional payments to Econ are expected if development of the Reserve or Commons proceeds. Mr. Larkin testified that Econ's assets were only worth $545,000 because of "the condition of the assets and the amount of improvements necessary to bring the assets to an acceptable condition." Mr. Larkin testified that the extraordinary circumstances for this case were:

> Wedgefield was able to purchase this utility for approximately 20 cents on the dollar. And if an acquisition adjustment is not recognized, that these ratepayers will be asked to pay a rate of return on whatever portion of that 2.8 million is eventually used and useful. And our feeling is it's probably pretty high now. Plus, whatever repairs and maintenance expenses are necessary to bring this up -- this utility up to a standard that would be acceptable for the consumption of the customers.

However, Mr. Larkin acknowledged under cross-examination that, absent this sale, Econ would have been allowed to earn a return on its net original cost, plus depreciation, subject to used and useful adjustments. Also, Mr. Larkin stated that he would not be troubled by the sale if Wedgefield had paid $2.8 million to acquire Econ's assets if that was an arm's length transaction.

Mr. Larkin prepared two schedules that illustrate relative income requirements under two investment alternatives: the purchase price before future payments, or $545,000, and the seller's net investment at December 31, 1995, or $2,845,391. He first calculated that allowing a 12.95% pre-tax return on the seller's investment would yield a 67.61% return on the purchase price. Second, he calculated that allowing a 6% return on a $2,800,000 investme. would yield a 30.83% return on $545,000.

We believe that these calculations only show that the acquiring company may realize an enhanced return on its investment that exactly corresponds to the price differential: the larger the price difference, the larger the expected return. However, when used-and-useful measures are considered, the income differential is accordingly reduced. Further, Mr. Larkin's equations do not show that Wedgefield's revenues would exceed Econ's comparative revenues. If operating expenses are reduced, the assumed expansion of earnings may be offset by a reduction in expenses. If cost of capital charges are reduced, other savings may result.

Utility Witness Seidman testified that he believed the price difference was the only condition that Mr. Larkin characterized as extraordinary. He argued that using this argument to justify inclusion of the acquisition adjustment was an exercise in circular reasoning. Instead, according to Mr. Seidman, the price difference is the incentive that the acquiring company obtains for buying the utility. On an overall basis, Mr. Seidman said the Commission should examine its policy from two perspectives: first, that Mr. Larkin's arguments have all been made before and rejected in a generic proceeding, and second, that the acquiring company relied upon the Commission's policy to bargain for and purchase this system.

In Docket No. 891309-WS, we reviewed our policy concerning acquisition adjustments. In Order No. 25729, issued February 17, 1992, we acknowledged that the buyer not only earns a return on the acquired utility's rate base but also depreciation on that balance. We concluded that without these benefits, "large utilities would have no incentive to look for and acquire small, troubled systems."

We concluded that, absent extraordinary circumstances, the seller's net book value should be retained.

Upon consideration of the parties' arguments, the evidence in the record, and our review of prior Commission orders on the matter, we believe that there are no extraordinary circumstances that warrant rate base inclusion of an acquisition adjustment in this case. As discussed previously in this Order, the acquired assets were in fair condition, neither extremely good nor extremely poor. Some water and wastewater lines were installed using asbestos-cement pipes, but there are no immediate plans to replace those facilities. Instead, the evidence shows that the estimated cost just to replace those lines would exceed the net book value of all of the utility's existing facilities.

We do not believe that the acquisition adjustment issue should depend upon the magnitude of the price differential. In other cases, we have encountered larger price and percentage differences while approving retention of the seller's net book value. Based upon certain underlying assumptions, including a 100% used-and-useful finding, Mr. Larkin calculated that Wedgefield would realize a 67.71% pretax return on its initial $545,000 investment. However, used-and-useful adjustments, if any, will reduce Wedgefield's income requirement. Further, any savings due to reduced expenses and cost of capital features are ignored in Mr. Larkin's model.

Interconnection with OCPUD's utility system was deemed impractical for various reasons, including significant costs to replace Econ's asbestos-cement lines and even larger expenditures to install transmission lines between Econ and Orlando's service areas. In other respects, Mr. Seidman testified that the OCPUD report indicated that severe corrosion was present at Econ's water and wastewater plants, but he explained that visible corrosion has already been corrected and other corrosion problems would be corrected through normal maintenance.

Accordingly, we find that there are no extraordinary circumstances in this proceeding which warrant a rate base inclusion of an acquisition adjustment.

Negative Acquistion Adjustment

In its brief, Wedgefield argues that because it has not requested rate base inclusion of a negative acquisition adjustment, the burden of proving that such an adjustment should be made rests with the party requesting such treatment, which in this case is OPC. In its brief, OPC argues that a $2,300,394 negative

acquisition adjustment, or Econ's net book balance of $2,845,394 less the $545,000 cash purchase price, should be included in rate base.

During the hearing, Mr. Wenz was asked whether Wedgefield should assume some of the burdens as well as some of the benefits of "stepping in the shoes" of the former company. Mr. Wenz indicated that if Wedgefield incurred costs to correct infiltration problems, Wedgefield would expect to recover those costs even if those problems were due to the previous owner's neglect of maintenance. However, Mr. Wenz responded that Wedgefield would not expect full recovery of similar costs if it had always owned the system and failed to maintain its lines. Asked to explain the seeming incongruity of those positions, Mr. Wenz testified that Econ had $7 million in accumulated operating losses on its books and, therefore, insufficient funds to better maintain its system. Further, as the acquirer of a troubled utility system, Wedgefield would expect to recover its costs and not be held responsible for the previous owner's omissions. Asked whether the previous owner's failure to properly maintain the system would qualify as an extraordinary circumstance, Mr. Wenz testified that it "hasn't been historically."

Mr. Larkin suggested that the Commission should use the actual purchase price and avoid subsequent sorting out of what was paid to correct this or that problem. If the Commission uses the purchase price, "we've got a number we can deal with. We won't have to deal with in the future about what may or may not be disallowed. Let them recover everything in the future that they pay to bring it up to snuff." We believe that Mr. Larkin's proposal goes to the heart of the many concerns that have been expressed over time about the Commission's policy regarding acquisition adjustments. However, it effectively removes the incentive factor for Wedgefield's acquisition of Econ's facilities.

Mr. Seidman also addressed the issue concerning the acquiring company's responsibility for problems caused by the seller. He testified that he believed Mr. Wenz was probably too careful in his remarks, and that some intermediate position was needed. He testified that when the Commission makes a negative acquisition adjustment, the buyer is held responsible since everything is written off, whether the impact is large or small: "(t)here's no incentive to me under that type of arrangement for anybody to make a purchase." If the negative acquisition adjustment is not made, "the purchaser gets the incentive, but the door is still left open" in a rate case to evaluate whether improvements are needed to compensate for prior neglect. Since the Commission can review the

problem in the future, the purchaser is protected because it has an opportunity to address those concerns at that time. He explained:

> You know there may be an adjustment appropriate in one particular account and not in another, instead of across the board and it's gone forever. To me that's fair. I've talked to Mr. Wenz, and he has no problem with that type of approach.

As noted previously, we do not believe any extraordinary circumstances have been shown in this case. Further, we do not believe that the price differential, alone, constitutes an extraordinary circumstance. Therefore, in accordance with our past practice, a negative acquisition adjustment will not be imposed in this proceeding.

NET BOOK VALUE

In its brief, Wedgefield explains that there is no dispute regarding the net book value of the acquired assets, which was $1,462,487 for the water system and $1,392,904 for the wastewater system. In its brief, OPC concurs that the original cost balance was about $2,845,394 for the combined water and wastewater systems.

The accounting records for Econ Utilities were reviewed by Staff Witness Welch, for the calendar year ended December 31, 1995. Staff Witness Welch is the Regulatory Analyst Supervisor for the Commission's Miami District Office. Based upon her inspection and her reliance on previous audits, Ms. Welch concluded that the original cost value for the acquired facilities was $1,462,487 for the water system and $1,382,904 for the wastewater system. Ms. Welch testified that she examined Econ's books but did not inspect its facilities and was uncertain whether an engineer from Tallahassee may have visited the utility. However, she testified that she was not expressing an opinion on whether rate base inclusion of an acquisition adjustment was proper.

Utility Witness Wenz testified that the rate base balances calculated in staff's audit correctly reflect the original cost of plant in service, net of accumulated depreciation and unamortized CIAC, at the time of transfer. OPC Witness Larkin testified that he was not taking exception to the audit report, which showed a net book value of $2,845,391 for the combined systems.

In light of the foregoing, and because the audit conclusions were not disputed, we find that the net book values for the acquired water and wastewater systems, at December 31, 1995, were $1,462,487 and $1,382,904, respectively.

RATE BASE

In its brief, Wedgefield argues that, pursuant to Section 367.081, Florida Statutes, the Commission must establish rates using the original cost of the company who dedicated that property to public service. In its brief, OPC argues that because of neglect by the previous owner, the $545,000 purchase price is the proper rate base amount.

As discussed previously, staff's audit reflected recommended rate base values of $1,462,487 and $1,382,904 for the respective water and wastewater systems, based upon Econ's net plant investment in the facilities. We determined previously herein that the rate base determination shall not include a negative acquisition adjustment. We believe that Wedgefield's rate base balance should match Econ's net book balance at the transfer date, which is consistent with Commission policy. Accordingly, we find that the rate base balances for the water and wastewater systems are $1,462,487 and $1,382,904, respectively.

CONTINGENT PORTION OF THE PURCHASE PRICE

In its brief, Wedgefield argues that there is no relationship between its payment of the contingent liability and Econ's rate base value and, thus, this topic is irrelevant. In its brief, OPC argues that the contingent payments should only be recognized when actually paid, and only if those payments do not collaterally increase the cost of service for existing customers.

By the terms of the purchase agreement, dated January 17, 1996, Econ agreed to sell its water and wastewater facilities to Wedgefield's parent company for an immediate $545,000 cash payment plus future payments based on expected development of the Commons. Pursuant to the agreement, all distribution and collection facilities within the Commons will be contributed to Wedgefield. The agreement also reflects that the added consideration will be 50% of the expected connection fees for the Commons. Four hundred housing units were originally planned for the Commons. At the hearing, Mr. Wenz testified that he believed the expected hookups had been reduced to 328. Under either condition, using the present $3,000 per unit connection fee, these future payments will increase Wedgefield's overall purchase price.

In Order No. PSC-96-1241-FOF-WS, issued October 7, 1996, Econ's per book investment of $2,845,391 was compared with Wedgefield's projected total investment ($545,000 plus $600,000) to disclose an excluded acquisition adjustment of $1,700,391. Using updated information, Wedgefield's projected investment will be

about $1,037,000 ($545,000 plus $492,000) and the acquisition adjustment will be $1,808,391. However, from a policy perspective, derivation of the acquisition adjustment balance is largely a balancing measure since the real issue is its inclusion or exclusion.

In its brief, Wedgefield comments that this issue is not relevant since it does not affect Econ's historical investment in plant facilities. OPC and its witness, Mr. Larkin, advocate recognition of the additional payments only after those payments are made. Then, their proposed accounting treatment for the additional payments would be a credit entry to contributions-in-aid-of-construction (CIAC) offset by an equivalent debit entry to the acquisition adjustment account. We agree that this method properly reflects the gradual nature of the contingent payments. At the hearing, Mr. Wenz testified that Wedgefield will fully account for any CIAC due from development of the Commons and recognize a contingent liability to Econ to reflect any subsequent payments, which is consistent with the accounting treatment proffered by OPC.

Over time, Wedgefield's purchase price will likely increase, thereby changing and reducing the negative acquisition adjustment. However, Order No. PSC-96-1241-FOF-WS did not explain that this change would be gradual. Instead, that order focused on a full accounting for future CIAC balances to preclude any understatement of CIAC due to retention of connection fees by the seller. That comparison in that Order produced a price differential based upon Wedgefield's prospective investment, not the current amount. If we were to approve Wedgefield's purchase price as the rate base amount, then Mr. Larkin's proposal to initially eliminate future payments would be proper.

As an alternative, Mr. Larkin proposed waiting until the cost of serving the Commons is known to evaluate whether the additional payments should be charged to the acquisition adjustment. Because that option involves uncertainty regarding future cost efficiencies, we decline to adopt Mr. Larkin's alternative proposal at this time.

As noted previously, Wedgefield contends that Econ's net book value should be the rate base amount, which does not depend upon subsequent payments to Econ. Conversely, OPC advocates use of the purchase price for future ratemaking purposes. It appears that both parties agree as to the proper accounting treatment for the contingent payments; the disagreement arises from different perspectives relative to retention of the seller's net book value versus the purchase price.

While we support retention of the original cost balance as the rate base amount from an accounting standpoint, we find that the contingent portion of the purchase price should only be recognized when the actual payments are made. However, for ratemaking purposes, the contingent payment element would only be an issue if we approved the purchase price as the rate base balance. However, as discussed subsequently in this Order, because we approve the seller's net plant balance as the rate base balance, that calculation is not affected by any contingent payment issues.

CLOSING OF DOCKET

Upon expiration of the time for filing an appeal, no further action will be necessary and this docket shall be closed. If a party files a notice of appeal, this docket shall be closed upon resolution thereof by the appellate court.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the attachment appended to this Order are by reference incorporated herein. It is further

ORDERED that rate base for Econ Utilities Corporation, which for transfer purposes reflect the net book value, is $1,462,487 for the water system and $1,382,904 for the wastewater system. It is further

ORDERED that there shall be no rate base inclusion of an acquisition adjustment for the purposes of the transfer. It is further

ORDERED that upon expiration of the time for filing an appeal, or upon resolution of any appeal filed in this matter, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of August, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JSB

Commissioner J. Terry Deason dissented in the Commission's decision in this docket with the following opinion:

I respectfully dissent from the majority's decision not to recognize a negative acquisition adjustment in this case. The Commission's policy has been that, absent extraordinary circumstances, there will be no rate base inclusion of an acquisition adjustment, either positive or negative. In my opinion, the Commission's standard has been met in this case and as such a negative acquisition should have been recognized.

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.

ATTACHMENT A

PROPOSED 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].

   RULING: Rejected as argumentative or conclusory.

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].

   RULING: Accepted.

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].

   RULING: Rejected as argumentative or conclusory.

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.]

RULING: Accepted.

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].

RULING: Rejected as argumentative or conclusory.

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].

RULING: Accepted.

PROPOSED 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.

RULING: Rejected as unsupported.

2. There is no extraordinary circumstances in this purchase, and no acquisition adjustment should be included in the rate base calculation.

RULING: Rejected as not constituting a conclusion of law.

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.

RULING: Rejected as not constituting a conclusion of law.

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).

   RULING: Rejected as not constituting a conclusion of law.

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.

   RULING: Rejected as not constituting a conclusion of law.

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.

   RULING: Rejected as not constituting a conclusion of law.

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.

   RULING: Rejected as not constituting a conclusion of law.

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.

   RULING: Rejected as not constituting a conclusion of law.

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. a) 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.

RULING: Rejected as not constituting a conclusion of law.

10. 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.

RULING: Rejected as not constituting a conclusion of law.

11. 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.

RULING: Rejected as not constituting a conclusion of law.

12. 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.

RULING: Rejected as not constituting a conclusion of law.

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

RULING: Rejected as unsupported.

14. 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 of 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 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.

RULING: Rejected as not constituting a conclusion of law.